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Supreme Court, U.S.
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No. OFFICE OF THE CLERK

In The

Supreme Court of the United States

THE NATIONALIST MOVEMENT,
Petitioner

vs.

CITY OF YORK,
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does the decision of the Court of Appeals that a fee may be charged for the exercise of free-speech and assembly at a seat-of-government conflict with relevant decisions of this Court?

2. Does the charging of a fee for the exercise of free-speech and assembly in the traditional public forum present a question of exceptional importance?

PARTIES TO THE PROCEEDINGS

Petitioner

The Nationalist Movement, a Mississippi non-profit corporation.

Respondent

City of York, a Pennsylvania municipal corporation.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, The Nationalist Movement, by and through counsel, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit in this matter.

OPINIONS BELOW

The ruling of the United States Court of Appeals for the Third Circuit from which certiorari is sought is contained in the case styled *The Nationalist Movement v. City of York,* 481 F.3d 178 (3d Cir.2007), at Appendix A, dated March 21, 2007, which affirmed an ordinance which required an application-fee for the exercise of First-Amendment rights at the seat of government. The final judgment is at Appendix B, certified April 12, 2007. The decision of the United States District Court for the Middle District of Pennsylvania, in the case styled *The Nationalist Movement v. City of York,* 425 F.Supp.2d 574 (2006), at Appendix C, dated March 24, 2006.

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 USC §1254(1) and 2106.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.1, Petitioner, The Nationalist Movement, states that it is a Mississippi non-profit corporation, having no parent corporation. It has no subsidiaries.

CONSTITUTIONAL PROVISIONS

Amendment I, United States Constitution:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment V, United States Constitution:

> No person shall be held to answer for a capital, or

> otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV, United States Constitution:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

RELEVANT STATUTORY PROVISIONS

CODIFIED ORDINANCE OF THE CITY OF YORK, PENNSYLVANIA ARTICLE 741, § 741.03 (2002)

(c). Permit requirement.

1. General. No person shall, without a permit:

(1) Conduct a public assembly, parade, picnic, or other event involving more than twenty-five individuals....

(d). Application for Permits.

3. Application Fee.

For any activity described in this chapter, Section 741.03(d)1, no application for permit shall be considered unless the applicant shall have paid at the time for filing an application permit the required application fee in an amount in accordance with the schedule of fees set by the Recreation Director and approved by City Council.

6. Fees for Use of Park Facilities.

No application for permit shall be granted unless the applicant has paid, within the time prescribed by the Recreation Director, a user fee and any other required fee in an amount in accordance with the schedule of fees set by the

Recreation Director and approved by City Council. No application for permit shall be granted unless all required fees are paid as set forth herein.

(e). Processing of Application for Permits.

2. Conditional Approval.

No permit shall be issued unless al applicable fees and security deposit are paid within the times prescribed by the Recreation Director. Failure to pay fees or security deposit within that time shall cause the application to be deemed denied, without further notice to the applicant.

5. Contents of Notice; Grounds for Denial

Notice of denial of an application for permit shall clearly set forth the grounds upon which the permit was denied and, where feasible, shall contain a proposal by the City for measures by which the applicant may cure any defects in the application for permit or otherwise procure a permit....

The City may also deny an application for permit on any of the following grounds:

> (2) The applicant has not tendered the required application fee with the application or has not tendered the required user fee.

6. Amendment or Revision of Applications.

Any amendment or revision of an application or permit shall for purposes of determining the priority of the application for permit, relate back to the original filing thereof; but the time in which the City shall grant or deny the application for permit and serve notice of such granting or denial shall be computed from the date of the amendment or revision.

(f) Procedures for Review: Waivers.

3. Waiver of Requirements.

Any requirements for a user fee, security deposits, or certificate of insurance shall be waived by the Solicitor's Office, if the activity is protected by the First Amendment of the United States Constitution and the requirement would be so financially burdensome that it would preclude the applicant from using Park property for the proposed activity. Fees for equipment and services shall not be waived pursuant to this subsection. Application for a waiver of a user fee, security deposit, or certificate of insurance shall be made on a form prescribed by the Solicitor's Office and must include an affidavit by the applicant and sufficient financial information about the applicant to enable the Solicitor's Office to determine whether the requirement(s) would be so financially burdensome that it would preclude the applicant from using Park property for the proposed activity. If it appears that the applicant does not have sufficient funds to satisfy the user fee requirement prior to the proposed event, the Solicitor's

Office shall require the applicant to pay such user fee out of the proceeds of the proposed event.

(g). Violations and Penalties.

Any person who shall fail or refuse to perform any act, duty or obligation imposed by this chapter shall, upon conviction thereof, be sentenced to pay a fine not exceeding $1,000 and costs of prosecution, and in default of payment thereof, may be imprisoned for not more than 30 days.

CITY OF YORK
Session 202
Resolution No. 56
April 16, 2002

WHEREAS, Article 741 of the Codified Ordinances of the City of York allows for a schedule of fees to be set by he Recreation Director and approved by City Council, and

WHEREAS, the following fees are set for this purpose:

	City Resident	Non-Resident
Basic Permit:	$50.00	$100.00

STATEMENT OF THE CASE

Petitioner sued for declaratory and injunctive relief against Respondent's wide-ranging speech and assembly ordinance. While litigation was pending, Respondent, dropped its bans on signs and distribution of literature and the requirement that protesters be a 501(c)(3) organization. Just prior to a hearing on Petitioner's motion for temporary restraining-order, Respondent waived the fee for the January, 2003 event and the District Court issued an order enjoining Respondent from interfering. Petitioner paid $1.00 to cover electric-power and its rally and parade at City Hall proceeded.

The District Court, then, struck down the security deposit and certificate of insurance requirements of the ordinance and the appellate-court invalidated the indemnification and reimbursement provisions, but sustained the permit-fee.

The appellate court reasoned that the permit fee did not impact a fundamental right, that precedent, here, allowed for such fees and that disparity of amount of fees, between residents and non-residents, was of no constitutional consequence. The Court, also, turned aside the challenge to the arbitrary pattern of conduct, in granting waivers, and lack of standards in application of the waivers.

Petitioners contend that the appellate-court was in direct conflict with relevant decisions of this Court, on an issue of exceptional importance, as to the propriety of

charging a fee for exercising First-Amendment rights in the traditional public-forum at the seat-of-government. The case is timely brought to redress the conflict.

STATEMENT OF THE FACTS

Petitioner desired to conduct a protest in honor of a slain-policeman and in opposition to the King Holiday, entitled *Henry Schaad Day*, on the steps of City Hall in York, Pennsylvania, on January 20, 2003. Respondent had passed an ordinance, shortly beforehand, requiring permit-fees, insurance-bonds, security-deposits and indemnification, as well as prohibiting signs and literature and requiring IRS-regulation approval, in direct response to earlier, disfavored protests by "white-supremacists."

Respondent commenced its series of notifications, applications and filings months in advance of its January, 2003 event, as well as for like events in January of 2004 and 2005. Petitioner had objected to the fee as unconstitutional and had supplied information of financial inability to pay it. A $100.00 permit-fee was levied for non-residents and $50.00 for residents. A fee-waiver was required to be requested on a specific form, supplied by Respondent, but, despite request, no form was ever supplied or waiver granted. The ordinance required a "relation-back" for any subsequent information and for Respondent to provide a list of defects in the application-process to be cured, which, despite request, was never supplied.

Respondent had a history of catering to "diversity" protests, which were welcomed on City Hall steps, but obstructing anti-"diversity" protests, including Petitioner's event, which were vilified by city-officials. After Petitioner's event proceeded under court-order, Respon-

dent continued to litigate and the 2004 and 2005 events were put on hold, after Respondent declined to process the applications, pending outcome of the litigation. Meanwhile, a "peace" group was "allowed," then banned, whereupon the group assembled outside the city-limits. However, when the group threatened to sue, Respondent waived fees and the event proceeded within city-limits.

REASONS FOR GRANTING THE PETITION

That there may be no charge for exercise of a First-Amendment right has been clear and profound since *Murdock v. Pennsylvania*, 319 U.S. 105, 113 (1943) (no fee for "the enjoyment of a right granted by the federal constitution"). The right was strongly reaffirmed in *Forsyth County, Georgia v. The Nationalist Movement*, 505 U.S. 123, 136 (1992), in which a fee was described as an impermissible "premium," unsupportable by modern constitutional-precepts. The law is well-settled. *Murdock* and *Forsyth County* control.

The Court below, however, misread *Forsyth County*, apparently surmising that since the case dealt primarily with arbitrary conduct of officials, the prohibition on "non-variable" fees may have been relaxed. But, such a conclusion seriously impacts freedom of speech and assembly, in the face of unambiguous decisions, here, to the contrary. The affront to free-speech presents a question of exceptional importance.

The ruling, below, also ratifies an arbitrary – and novel – distinction between residents, who pay less, and non-residents, who pay more, to speak, without any showing of some compelling governmental reason for the adverse impact upon equal-protection and prior-restraint upon speech. The fatality is compounded because, on its face or as applied, the fee is the product of a waiver procedure, without restraint, which is particularly egregious because of its pattern of yo-yo application, granted for some, whose speech is favored, but withheld for others,

whose speech is disfavored.

If left without redress, the fees could multiply in numbers, increase in size and erase longstanding and hallowed freedoms.

PROPOSITION I

THE DECISION OF THE COURT OF APPEALS THAT A FEE MAY BE CHARGED FOR THE EXERCISE OF FREE-SPEECH AND ASSEMBLY AT A SEAT-OF-GOVERNMENT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT

A "premium" in the form of a fee may not be levied on speech, *Forsyth County, Georgia v. The Nationalist Movement,* 505 U.S. 123, 136 (1992) (no fee or "premium").[1] [2]

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[1] *See also Jones v. Opelika*, 319 U.S. 103 (1943) (no license fee or tax upon exercise of the First Amendment); *Follett v. Town of McCormick*, 321 U.S. 573 (1944) (striking down $1.00 license fee); *Murdock v. Pennsylvania*, 319 U.S. at 113 (invalidation of "destructive effect" of license tax on First Amendment); *Grosjean v. American Press Co.*, 297 U.S. 233 (1936) (no "license tax" on "privilege" of circulating newspaper); *Forsyth County*, 505 U.S. at 130 (heavy presumption against prior-restraint on speech).

[2] The circumstances in this case reflect an exercise of these basic constitutional rights in their most pristine and classic form. The petitioners ... peaceably assembled at the site of the State Government and there peaceably expressed their grievances....

The Court, below, has misread *Forsyth County*, by repairing to *Cox v. New Hampshire* [A.8] for the supposed proposition that a permit-fee may be levied to "meet the expense incident to the administration of the Act." However, *Forsyth County* noted that no fee was actually charged in *Cox* and, notwithstanding, under modern constitutional jurisprudence, no such fee could be levied, anyhow.[3]

Forsyth County was decided to determine the propriety of charging a fee[4] [emphasis added] for use of the

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Edwards v. South Carolina, 372 U.S. 229, 235 (1963). Seat of government the "archetype of a traditional public forum," *Forsyth County*, 505 at 130.

[3] Nothing in this Court's opinion suggests that the statute, as interpreted by the New Hampshire Supreme Court, called for charging a premium in the case of a controversial political message delivered before a hostile audience. In light of the Court's subsequent First Amendment jurisprudence, we do not read *Cox* to permit such a premium.

Forsyth County, 505 U.S. at 136.

[4] We granted certiorari to resolve a conflict among the Courts of Appeals concerning the constitutionality of charging a fee for a speaker in a public forum.

traditional public-forum and to reconcile disparity between various Circuits on the subject. It has consistently been followed, until now.[5]

The suggestion that, because *Forsyth County* dealt primarily with variable fees, non-variable fees are somehow revived [A.8] is dreadful, perilous and regressive. If so, street preachers would, once again, be charged license fees. Candidates, delivering cards, door-to-door, would be assessed a tax. And, memorial-holders, at City Hall, levied a premium. It is as unthinkable, unfathomable and untenable as it is unconstitutional.

PROPOSITION II

THE CHARGING OF A FEE FOR THE EXERCISE OF FREE-SPEECH AND ASSEMBLY IN THE TRADITIONAL PUBLIC FORUM PRESENTS A QUESTION OF EXCEPTIONAL IMPORTANCE

A. The charging of a fee for "free-speech" violates the First Amendment

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Forsyth County, 505 U.S. at 129 [emphasis added].

[5] In addition, the Court, below, failed to apply strict-scrutiny or consider the proviso as content-based, *cf. Turner Broadcasting System v. FCC*, 512 U.S. 622, 642 (1994) (analysis indicated when substantial risk of eliminating certain ideas or viewpoints from the public dialogue comes into play).

No other municipalities in the nation appeared to impose a permit or license fee upon speech, prior to this case. However, no sooner was the ruling, below, handed down than Hammonton, New Jersey, also situated in the Third Circuit, followed Respondent in imposing a permit-fee of its own, *see, e.g. RACE – The KKK's Inroads in the Northeast*, April 3, 2007, *Centre Daily*, State College PA [A.74] ($10.00 fee). Should the Court decline to disturb the ruling, at hand, the prospects for free-speech could become even bleaker, as others, pressed to set back speakers and assemblers, because of the content of their speech, proliferate.

If one court or one town is permitted to constrict this Court's clear mandate that no premium or charge may burden the First Amendment, there will be virtually no limit to the sums charged or the "chilling effect" spread. The Court, below, has acquainted the charging of a license fee for speech and assembly at the seat of government to a hunting license or school-tuition [A.8-9, n.4], suggesting that such speech and assembly is not a fundamental right [A.8-9, n.4].[6] But, the test is, actually, if there is some compelling governmental interest to support

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[6] *Central Florida Nuclear Freeze Campaign v. Walsh*, 774 F.2d 1515, 1523–24 (11th Cir. 1985), which countenanced a "nominal" fee, is also misread, insofar as it was overruled by *Forsyth County, see Forsyth County*, 505 U.S. at 128-129, 136 ("the level of the fee is irrelevant").

such a prior-restraint[7] upon speech? *See, e.g. Forsyth County*, 505 U.S. at 137 (fee "unrelated to any legitimate state interest" invalid); *Forsyth County*, 505 U.S. at 130 (scheme must serve "significant governmental interest); *Forsyth County*, 505 U.S. at 136 (raising revenue no justification for fee).

Instead of a fee-scheme, confiscatory of First Amendment rights, the goal of the First Amendment is to foster "the widest possible dissemination of information from diverse and antagonistic sources," *Associated Press v. United States*, 326 U.S. 1, 20 (1945).[8] In fact, "[i]t is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail," *cf. Red Lion Broadcasting v. FCC*, 395 U.S. 367, 390 (1969). Note, also, the "profound national commitment" to "uninhibited, robust and wide-open" discussion of public issues, *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

B. Disparate fees, for residents and non-residents, violate the First and Fourteenth Amendments

Crowds, large and small, have been taking to the streets, of late, expressing themselves on Iraq, immigra-

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[7] *See Niemotko v. Maryland*, 340 U.S. 268, 271 (1951) and *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963) for the "heavy burden"against prior restraint.

[8] A thesis with which this brief-writer, personally, disagrees.

tion, campus-murder and other "hot-button" issues. There will be even more as electioneering heats up. But, what if more municipalities were to impress a fee, even distinguishing between "residents" and "non-residents"? The people would have the right to assemble "with impunity," when faced with an unconstitutional measure, *Shuttlesworth v. Birmingham,* 394 U.S. 147, 151 (1969). But, if the Third Circuit's "wavering trumpet" causes local officials to be unsure just what the law is, will there be a return to growling dogs, fire-hoses and billy-clubs to maintain order? Will there be disorder in the streets? Even in the courts?

The District Court had stated, without citing any authority, that the disparate fee scheme encouraged local residents to use the public forum [A.49], a rationale undisturbed by the appellate-court [A.16, n.10, 54]. *Ipso facto*, non-residents would necessarily be discouraged from doing so. This to the backdrop of pronouncements by city-officials that the ordinance was designed to make "white-supremacists" "go elsewhere." This emasculates the First Amendment and, if allowed to stand, would roll back certain equal-protection guarantees of the Fourteenth Amendment for over half-a-century.

First-Amendment freedoms are for all, not just for some, *Associated Press*, 326 U.S. at 20. *Cf. Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 U.S. 94, 123 (1973) (creating status for would be speakers based on ability to pay unconstitu-

tional). For Donald Trumps[9] and Thomas Paines, alike. In addition, there is no rational or constitutional justification, *arguendo*, to charge John McCain less to appear in Phoenix, because he hails from Arizona, than John Edwards, who resides in North Carolina.

C. The purpose of a permit-scheme is solely to regulate competing usage of the public forum

This case seems opportune to remind officials, once again, of their duty to enact and enforce precise regulation. In a bid to claim "even-handedness," Respondent had waived, then enforced the permit-scheme against a "peace" group, forcing it out of town. But, when the group objected and threatened to sue, Respondent immediately waived the fee.[10] The on-again-off-again treatment is plainly unconstitutionally arbitrary. *See NAACP v. Button*, 371 U.S. 415, 438 (1963) ("precision of regula-

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[9] Petitioner contends, as well, in behalf of those not before the Court who may be able to afford the fee, but who should not be required to pay because the fee is so repugnant to the First Amendment. *Cf. Forsyth County*, 505 U.S. at 129 (standing because of potential to chill the expressive activity of others not before the court).

[10] Some background is mentioned at A.55-56. Conduct toward the "peace" group is set out in more detail at A.57-67 and toward "white-supremacists" and "diversity" groups at A.68-73 [per Court-of-Appeals Appendix]. The standard for review here is *de novo*, *Edwards*, 372 U.S. at 235.

tion" required for constitutionally protected activity). Moreso, Respondent has neither waived the fee to Petitioner for future events nor abolished it.

There is a single purpose for a permit-scheme. That is to assure first-come, first-served use of the public-forum, held in trust by government for peaceful use by the people.[11] Welcoming "diversity" elements, but penalizing opposing views, by way of fees and bureaucratic obfuscation,[12] as well as public denunciations, because of the content of the message, is intolerable, *cf. Regan v. Time, Inc.*, 468 U.S. 641, 648-649 (1984) (regulations permitting government discrimination on the basis of content of message cannot be tolerated under the First Amendment).

The pattern of abuse became evident when the "diversity" protest went unobstructed, but succeeding "white-supremacists" were denied a microphone, a podium and freedom from hecklers. They were, also, sent a bill. The Nationalists (who Respondent denominated as "white-su-

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[11] The proper exercise of governmental authority is simply to assure the first-come, first-served priority of differing events ... seeking ... the same time, *cf. Cox v. New Hampshire*, 312 U.S. 569, 574-576 (1941). *Hague v. C.I.O.*, 307 U.S. 496, 515 (1939) (public fora held in trust).

[12] Unconstitutional licensing law may simply be ignored, *Shuttlesworth*, 394 U.S. at 151.

premacists"[13]) were stonewalled, denied and charged.[14] After litigation, Respondent "waived" its fee, contending that doing so "settled" the case, but would not rescind the fee.

D. The standardless waiver-scheme is so susceptible to abuse as to be facially or as applied invalid, under the First, Fifth and Fourteenth Amendments

It seems a "vicious circle" that legitimate protest may spawn illegitimate abuse. But it is of exceptional importance to stay the arbitrary and oppressive hand, by way of a clear pronouncement, especially with reform vying against orthodoxy and the "ins" challenging the "outs" as part of a democratic system of government. The signal must be that "the system" is responsive and workable.

So, in addition to the pattern of arbitrary waivers, the

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[13] The organization describes itself as "pro-majority," seeking to advance majority-rule, democracy and nationalism. It advocates national-referenda and opposes sectionalism.

[14] In evaluating petitioner's facial challenge, we must consider the county's authoritative constructions of the ordinance, including its own implementation and interpretation of it.

Forsyth County, 505 U.S. 123, 131 (1992).

waiver-scheme having no standards[15] and, necessarily, being subject to abuse, should be addressed. The test is whether there is anything in the ordinance to guide or restrain Respondent in administering waivers.[16] There is not. But, there are questions unanswered and unanswerable through the present measure. This Court has said that

> Granting waivers to favored speakers (or, more precisely, denying them to disfavored speakers) would of course be unconstitutional, but we think that this abuse must be dealt with if and when a pattern of unlaw-

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[15] The Void-For-Vagueness Doctrine rests upon the due process clause of the Fifth and Fourteenth Amendment and applies to regulations which lack clarity and precision, *see The Void-For-Vagueness Doctrine in the Supreme Court*, 109 U.Pa.L.Rev. 67 (1960). The Overbreadth Doctrine applies primarily to First Amendment rights, *see e.g. City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 798-799 (1984).

[16] Accordingly, the success of a facial challenge on the grounds that the ordinance delegates overly broad discretion to the decisionmaker rests not on whether the administrator has exercised his discretion in a content-based manner, but whether there is anything in the ordinance preventing him from doing so.

Forsyth County, 505 U.S. at 134, n. 10.

ful favoritism appears....

Thomas v. Chicago Park Dist., 534 U.S. 316, 325 (2002). Notwithstanding, the Court, below, shunted aside the yo-yo application of the fees, wherein Respondent would deny waivers to some, who were disfavored, then switch, either to avoid litigation or upon a whim, based upon approval or disapproval of the content of speech of those seeking to assemble.

What makes one financially eligible for a waiver? Petitioner, a corporation, submitted its tax-forms, showing a net-operating loss of some $1,834.00 [A.76]. But, the "peace" and "diversity" groups were unincorporated. Insofar as an unincorporated organization is the sum of its members, would the names and personal financial-condition of all members need to be shown? Or just the individual applicant? Or everyone taking part in the protest?[17] The determination would be at the whim of Respondent and determined by Respondent's favoring or disfavoring the applicant's views.[18] There would, also, be

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[17] The ordinance regulates events "involving" a given number, Article 741, § 741.03(c)1(1), but is unclear as to how to determine what "involving" means.

[18] The twenty-five person threshold for the size of the event, for imposing of the fee, is similarly susceptible to abuse, overbroad and void-for-vagueness, *cf. Police Department of Chicago v. Moseley*, 408 U.S. 92 (1972) (for the rationale), *Smith v. Goguen*, 415 U.S. 566 (1974) (for the potentiality for abuse), *Forsyth County*, 505 U.S. at

the chilling-effect of having the identities of those seeking to exercise their First Amendment rights disclosed unnecessarily, *cf. NAACP v. Alabama*, 357 U.S. 449 (1958) (prohibition against disclosure of membership).

Waiver is necessarily tied to the content of speech. For example, if a circus applies, Respondent must consider the "commercial" nature of the event, in order to determine whether or not to grant a waiver, but if a petition-drive applies, Respondent must consider the "non-commercial" animus. Issuing or not issuing[19] a

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130 (overly broad licensing authority prohibited), *Grayned v. City of Rockford*, 408 U.S. 104 (1972) (overbreadth prohibition).

There are no guidelines as to what constitutes the twenty-five. The number actually appearing on the steps? Supporters beneath the steps? "Card-carrying" members? Spectators across the street? Police? Reporters? Counter-demonstrators on the sidelines? Members of the public stepping up to take part or sign petitions, on the spur-of-the-moment? *Cf. Forsyth County*, 505 U.S. at 130-131 (narrow, objective, and definite standards required), *Coates v. Cincinnati*, 402 U.S. 611 (1971) (ordinance vague for lack of standard of conduct).

[19] Respondent refused to provide waiver forms for the 2003, 2004 and 2005 events or to process the application for the 2004 and 2005 events.

See, e.g. Initial Application of April 23, 2002 [A.77],

reciting, *inter alia*:

> There will be no charges, permit fees, insurance bonds, security costs or any other taxes whatsoever on the grounds that any such scheme would violate the First Amendment and, alternatively, that the sponsor is not able to afford any such costs. I am authorized to tender the sum of $1.00, however, to cover the small amount of electricity consumed.... If you do have any particular forms you wish to be completed or procedures you wish us to consider, please forward them to me. [A.78, 79].

See also, Application for 2004 and 2005 of September 3, 2002 [A.74], reciting, *inter alia:*

> The Nationalist Movement is unable to afford any such fees, bonds, levies, taxes or charges and, furthermore, objects to the same, as well as the ordinance which purports to levy them, as a violation of the First and Fourteenth Amendments, on its face or as applied. Waiver of the ordinance or its provisions cited above is, also, hereby requested on First Amendment grounds [A.82].

See also, Final Demand for permits and waivers of Sep-

waiver, therefore, is based entirely upon the content of speech, the same as whether to charge a large or small fee, or no fee at all, in *Forsyth County*. The scheme is just too susceptible to abuse and imposing of censorship to pass constitutional muster. *Cf. Murdock*, 319 U.S. at 111 (distinguishing "purely commercial" speech from protected speech).

CONCLUSION

"Taxes," "premiums" and "fees" on speech were abolished over fifty years ago. The issue came up, again, fifteen years ago, when a fee disguised as a "cost" reared up, only to be consigned to the same trash-bin as its predecessors. Once again, we are dealing with a licensing of speech, a tax on the exercise of a right guaranteed by the First Amendment,[20] of the self-same character repeatedly condemned.

This case sprang from the most draconian restraints on the First Amendment in American history. Proscription against displaying placards and distributing litera-

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tember 17, 2002 [A.83] ("various applications for permits and waivers ... remain unanswered").

[20] It is one thing to impose a tax on the income or property of a preacher. It is quite another thing to exact a tax from him for the privilege of delivering a sermon.

Murdock, 319 U.S. at 112.

ture. Levies which could impress millions of dollars upon those seeking to speak. Yet, the question remains, "May there be a fee, at all, upon free speech?"

The courts, below, seem to have cast and answered the question in terms of whether there could be a "large" fee and the answer has been clearly, "No." But, although *Forsyth County* settled the dispute fifteen years ago,[21] the self-same Nationalist Movement, perhaps fittingly, is drawn to rekindle the flame.

It seems so "late in the day" in First-Amendment jurisprudence to have to bring the case back, again. Precedent is so clear and settled that charging a fee to speak should be recognized as every bit as onerous as imposing a stamp to print, a license to evangelize or a tax to vote. And, yet, what is to be done, when one Circuit so drastically departs from this Court's well-established holding, concerning such an issue of exceptional importance?

The temptation might be to conclude that the happenstance is a "fluke,"which could hardly be taken as precedential. Yet, the Court, below, has labeled its ruling as "precedential" [A.1] and, already, at least one municipality has picked up on it by imposing a similar fee. And, more, lacking guidance, could follow suit.

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[21] A tax based on the content of speech does not become more constitutional because it is a small tax.

Forsyth County, 505 U.S. at 136.

If there is a "fee for free-speech," a "tax" for entry into the quintessential marketplace of ideas, the profound national commitment to wide open and robust discussion of public affairs will be but a hollow shell and freedom of speech and assembly will have become a "privilege," instead of a right.

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

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Appendix 1

APPENDIX A

PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 06-2184

THE NATIONALIST MOVEMENT,
Appellant,

v.

CITY OF YORK,
Appellee

APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA
D.C. Civil No. 02-cv-01917
District Judge:
The Honorable Yvette Kane, Chief Judge
Argued: January 30, 2007

Before: BARRY and ROTH, Circuit Judges, and
DEBEVOISE,* District Judge

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* The Honorable Dickinson R. Debevoise, Senior District Judge, United States District Court for the District of New Jersey, sitting by designation.

Appendix 2

(Opinion Filed: March 21, 2007)

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OPINION OF THE COURT

BARRY, Circuit Judge

Appellant, The Nationalist Movement, challenges the constitutionality of section 741.03 of the Codified Ordinances of the City of York ("section 741.03" or "the Ordinance"), which requires, in certain circumstances, that prospective users of public land within the City file an application, pay certain fees, and agree to a variety of

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conditions before permission for the use of that land is granted. The District Court ruled that two provisions of the Ordinance were unconstitutional, a ruling the City has not appealed, but the Court upheld the remainder of the Ordinance and granted summary judgment for the City. We will affirm in part and reverse in part.

I.

As relevant here, section 741.03, the Public Meetings provision, prohibits persons from "[c]onduct[ing] a public assembly, parade, picnic, or other event involving more than twenty-five individuals" on public land without first obtaining a permit. § 741.03(c)(1)(A). In order to obtain a permit, an applicant must file a written application and tender an application fee, § 741.03(d), which is $50 for city residents and $100 for non-residents. In addition, an applicant must sign an agreement "in which the applicant shall promise and covenant to bear all costs of policing, cleaning up and restoring the park; to reimburse the City for any such costs incurred by the City; and to indemnify the City and hold the City harmless from any liability to any person resulting from any damage or injury occurring in connection with the permitted event proximately caused by the action of the permittee" or its agents, §741.03(d)(6), and pay "a user fee," § 741.03(d)(8). The Ordinance provides that the requirements "for a user fee, security deposits, or certificate of insurance shall be waived . . . if the activity is protected by the First Amendment of the United States Constitution and the requirement would be so financially burdensome that it would preclude the applicant from using Park prop-

erty for the proposed activity." § 741.03(f)(3).[1] Completed applications will "be processed in order of receipt," §741.03(e)(1), and grounds for denial, § 741.03(e)(5), deadlines, and procedures for review and appeal, § 741.03(f), are set forth.

On June 14, 2002, The Nationalist Movement submitted an application to hold Henry Schaad Day[2] and a King Holiday Protest at York City Hall on January 20, 2003. On that application, it objected to the various fees as a "violation of the First Amendment," but did not indicate that it was financially unable to pay the fees and did not request a waiver form. The City denied the application as incomplete and a series of letters then passed between the parties. Following the final rejection of the application, The Nationalist Movement first requested a waiver form and, on October 25, 2002, filed this action in the District Court.

The City moved to dismiss and The Nationalist Movement moved for a temporary restraining order and a preliminary and permanent injunction. Prior to the hearing on the injunction, the parties agreed that The Nationalist

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[1] The District Court found the security deposit and certificate of insurance provisions to be unconstitutional, a finding, as noted above, the City has not appealed.

[2] Schaad was a Caucasian rookie police officer who was shot and killed during race rioting in York in July 1969.

Movement could hold its event on January 20, 2003 without obtaining a permit or paying more than a $1 nominal fee. The City did not concede any defects in the Ordinance, but, rather, represented to the Court that the Ordinance did not apply because the event would have less than twenty-five participants. The event took place without incident. The Nationalist Movement subsequently filed applications to hold events in 2004 and 2005, applications which have been held in abeyance pending resolution of this case.

On May 5, 2003, the City moved to dismiss based on the "settlement agreement" which had been reached with The Nationalist Movement. That motion was denied. The parties then moved for summary judgment. By Memorandum and Order dated March 24, 2006, the District Court ruled that the requirements that a security deposit be paid and a certificate of insurance obtained before a permit could issue violated the First Amendment of the Constitution because they essentially allowed the City to charge higher fees based on the content of the applicant's message. The Court upheld all of the other challenged provisions as constitutional and granted summary judgment for the City. In addition, the Court rejected The Nationalist Movement's as-applied challenge and equal protection arguments. Resolution of The Nationalist Movement's request for attorneys' fees was stayed pending this appeal.

We have jurisdiction over The Nationalist Movement's appeal pursuant to 28 U.S.C. § 1291. We exercise plenary review of a district court's order granting sum-

mary judgment. Reese Bros., Inc. v. United States, 447 F.3d 229, 232 (3d Cir.2006).

II.

We decide, first, whether The Nationalist Movement can bring a facial challenge to the Ordinance. Although the 2003 Henry Schaad Day went forward as planned, the Supreme Court has long held that statutes which threaten to chill First Amendment speech may be facially challenged without the necessity of the speaker being denied, or even having applied for, a permit. City of Lakewood v. Plain Dealer Publ'g Co., 486 U.S. 750, 755–59 (1988); Shuttlesworth v. City of Birmingham, 394 U.S. 147, 150–51 (1969). As the Court explained in Plain Dealer Publishing Co., "a facial challenge lies whenever a licensing law gives a government official or agency substantial power to discriminate based on the content or viewpoint of speech by suppressing disfavored speech or disliked speakers." Plain Dealer Publ'g Co., 486 U.S. at 759. Because we agree that the Ordinance chills speech on the basis of its content, The Nationalist Movement has standing to maintain its facial challenge.[3]

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[3] Although we find that The Nationalist Movement can maintain its facial challenge, we find its as-applied challenge to be completely without merit. As noted above, the City allowed Henry Schaad Day to take place as scheduled and charged The Nationalist Movement a $1 nominal fee. As such, The Nationalist Movement has no legitimate basis to challenge the application of the Ordinance to it. Furthermore, the contention that the City

Appendix 7

We turn, then, to the constitutionality of the Ordinance In Forsyth County v. Nationalist Movement, 505 U.S. 123, 130 (1992), the Supreme Court held that an "ordinance requiring a permit and a fee before authorizing public speaking, parades, or assemblies" in traditional public fora "is a prior restraint on speech" and therefore subject to a heavy presumption against its validity. Because the government does, however, have an interest in regulating competing uses of public space, such a prior restraint will be found constitutional where it does "not delegate overly broad licensing discretion to a government official" and is a valid time, place, and manner restriction, i.e., it leaves open ample alternatives for communication and is content-neutral and narrowly tailored to serve a significant governmental interest. Id.

In Forsyth County, the Court was faced with a statute which allowed the levying of a permit fee of up to $1000 per day which was designed to defray administrative costs and the cost of necessary law enforcement at the planned event. The Court found such a variable fee to be violative of the First Amendment for a number of reasons. First, there were no standards directing the setting of the fee, such that it was "left to the whim of the administrator." Id. at 133. "The First Amendment prohibits the vesting of such unbridled discretion in a government offi-

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improperly failed to waive the application fee is belied by the record. The Nationalist Movement did not comply with the procedures in the Ordinance and it did not even request a waiver form until after the final rejection of its application.

cial" because such power could be easily used in a political fashion Id. Second, and alternatively, the fee was, in part, based on the content of the speech.

Significantly, however, the Court did not rule that application or permit fees are unconstitutional. In fact, the Court cited its earlier decision in Cox v. New Hampshire, 312 U.S. 569 (1941), in which it stated that "[t]here is nothing contrary to the Constitution in the charge of a fee limited" to "meet the expense incident to the administration of the Act and to the maintenance of public order in the matter licensed." Cox, 312 U.S. at 577.

There is no discretionary component involved in setting the application fee here. The fee is $50 for residents and $100 for non-residents and, absent waiver, is applied across the board to all prospective users of "Park property." This fee is nominal, is not content based, and is narrowly tailored to allow the city to recoup the cost of processing the application. Under Forsyth County, there is nothing about the application fee that is violative of the First Amendment.[4]

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[4] The Nationalist Movement also challenges the $50/$100 application fee differential as violative of the Equal Protection Clause. The District Court rejected this challenge, finding that the lower fee for residents furthered the legitimate government purpose of encouraging residents to hold events locally. The Supreme Court has upheld residency requirements such as this under a rational basis test where, as here, there was no contention that fundamental rights were at issue. See, e.g., Mar-

Furthermore, at oral argument the City conceded that it reads the provision in the Ordinance waiving a user fee, security deposit, or certificate of insurance to apply as well to the application fee, despite the seemingly contrary language in the waiver provision itself.[5] See Forsyth County, 505 U.S. at 131 (stating that courts must consider the government's "authoritative constructions of the ordinance, including its own implementation and interpretation of it"). As such, as construed by the City, the application fee does not unconstitutionally burden the free speech rights of those speakers too indigent to afford its payment. See Cent. Fla. Nuclear Freeze Campaign v.

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tinez v. Bynum, 461 U.S. 321, 328–29 (1983) (school residency requirement); Baldwin v. Fish & Game Comm'n of Mont., 436 U.S. 371, 388–92 (1978) (hunting permit for sport). The Nationalist Movement has not shown that the rational basis test does not apply to this content-neutral minimal application fee, much less that, under that test, the differential does not pass muster.

[5] The City further acknowledged that the Ordinance should be amended to more clearly reflect this interpretation of its scope. It also acknowledged its understanding that the waiver provision applies to the reimbursement and holdharmless provisions. We are skeptical as to how the waiver provision, in its current form, could be read in such a fashion, and expect that during the amendment process the City will rework that provision such that its scope is clear.

Walsh, 774 F.2d 1515, 1523–24 (11th Cir. 1985) (discussing Lubin v. Panish, 415 U.S. 709 (1974)).

In addition to the payment of an application fee, applicants must sign an agreement "in which the applicant shall promise and covenant to bear all costs of policing, cleaning up and restoring the park" and "reimburse the City for any such costs incurred by the City." § 741.03(d)(6). We find that this reimbursement provision is unconstitutional, and that the District Court erred in finding to the contrary.[6]

It is beyond peradventure that a city can establish a permit scheme whose goal is to "assure financial accountability for damage caused by" an event, Thomas v. Chi. Park Dist., 534 U.S. 316, 322 (2002), and can take into account the resulting expense of an event in assessing a fee. Thus, for example, a circus or other large parade can be assessed a larger fee than a small parade, because the

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[6] We reject the City's argument that this provision is constitutional because it is identical to a provision in the Chicago Park District ordinance, an ordinance unanimously upheld by the Supreme Court. Thomas v. Chi. Park Dist., 534 U.S. 316 (2002). In Thomas, however, the ordinance was challenged only on the ground that the rigid procedural requirements of Freedman v. Maryland, 380 U.S. 51 (1965), should apply. The Court rejected that challenge and noted that the petitioner did not argue that the ordinance was not content-neutral or otherwise invalid as a time, place, and manner restriction. Thomas, 534 U.S. at 323 n.3.

former would cause a larger expense to the government than the latter. Cox, 312 U.S. at 577; see also Murdock v. Pennsylvania, 319 U.S. 105, 116 (1943); Church of the Am. Knights of the Ku Klux Klan v. City of Gary, 334 F.3d 676, 682 (7th Cir. 2003).

Such expenses, however, cannot be based on the content of the proposed speech. In Forsyth County, the Court found a permit fee that was based, in part, on the need to defray the cost of providing police protection to the speaker to be an unconstitutional content-based fee.[7] The Court ruled that such a fee is necessarily based on the content of the speech because the anticipated cost would need to be determined by estimating the public's reaction to the speech. Forsyth County, 505 U.S. at 134. For instance, "[t]hose wishing to express views unpopular with bottle throwers . . . may have to pay more for their permit." Id. The Court held that raising revenue for police

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[7] 7 At first blush, a provision that charges for the policing of an event seems like a content-neutral restriction because it serves a purpose unrelated to content, even though it places a greater burden on some speakers. See Ward v. Rock Against Racism, 491 U.S. 781, 792 (1989). The Court in Forsyth County, however, dispelled any such idea, finding that "it cannot be said that the fee's justification has nothing to do with content" given that an accurate estimation of the necessary security would "necessarily" involve an examination of the content of the speech, an estimate of the response of others, and a determination of the "number of police necessary to meet that response." Forsyth County, 505 U.S. at 134.

services could not justify such a content-based fee.[8] Id. at 136; see also Church of the Am. Knights, 334 F.3d at 680–82; Cent. Fla. Nuclear Freeze Campaign, 774 F.2d at 1524–25; Invisible Empire Knights of the Ku Klux Klan v. City of West Haven, 600 F. Supp. 1427, 1433–34 (D.Conn. 1985).

Applying this principle, the District Court found that the security deposit and insurance requirements imposed an unconstitutional content-based restriction because the City based the required amounts of the security deposit and insurance coverage on the "group's reputation" and the "unpopularity of the group's message." Memorandum at 16 & n.6. This, the Court held, "threatens to dissuade unpopular groups from utilizing traditional public forums by placing a premium on — what the city views as — unpopular speech" and is therefore unconstitutional. Id.

The reimbursement provision is similarly unconstitutional. As the City conceded at oral argument, the reimbursement provision is the flip side of the same coin as the unconstitutional security deposit and insurance re-

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[8] At that point in its analysis, the Court did not note the standard that it was applying. Content-based regulations are subjected to a higher standard of review than content-neutral ones. The government must show that the regulation is necessary to serve a compelling state interest and is narrowly drawn to achieve that end. See Ark. Writers' Project, Inc. v. Ragland, 481 U.S. 221, 231 (1987).

quirements. Unlike those requirements, which require a speaker to incur costs calculated at least partially on estimates linked to the content of the proposed speech before its event takes place, the reimbursement provision requires a speaker to pay, after its event has taken place, the actual costs incurred by the City. We find that this distinction is not constitutionally significant, at least not in this case.

The broad language of the reimbursement provision clearly allows the City to charge a speaker not only for costs rightfully associated with its event, but with numerous other, content-based, costs.[9] For example, the City

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[9] This broad language can be contrasted with the Ordinance's hold-harmless clause, which requires the speaker to agree "to indemnify the City and hold the City harmless from any liability to any person resulting from any damage or injury occurring in connection with the permitted event proximately caused by the action of the" speaker. § 741.03(d)(6). On its face, this clause applies only to damages for which the speaker can legally be held liable, and, as the District Court pointed out, Pennsylvania law provides that such provisions must be strictly construed and "limited in scope to matters expressly covered therein." Fulmer v. Duquesne Light Co., 543 A.2d 1100, 1104 (Pa. Super. Ct. 1988). As such, the hold-harmless clause here is significantly narrower in scope than one recently upheld by the Ninth Circuit. In Santa Monica Food Not Bombs v. City of Santa Monica, 450 F.3d 1022 (9th Cir. 2006), the Court, over a strong dissent, upheld a hold-harmless clause which was so

would incur expenses planning for the public's reaction to the speech, making available the necessary resources to contain potential counter-demonstrators, providing an appropriate level of police presence to control and pacify counter-demonstrators, and generally protecting the speaker. All of these actions would necessarily require a consideration of the content of the proposed speech and the anticipated reaction of the public. If we countenanced a charge for such expenses, we would be allowing the ruling in Forsyth County to be undermined by the simple expedient of charging content-based fees after an event has taken place rather than before and we would be ignoring precedent of long standing holding that speech cannot be burdened because of the reaction of others. See, e.g., Terminiello v. Chicago, 337 U.S. 1, 5 (1949); Schneider v. State (Town of Irvington), 308 U.S. 147, 162 (1939).

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broad as to require a speaker to indemnify the city for the defense of frivolous suits and for damages caused "by the conduct of an opponent of the demonstration through no fault of the [speaker]." Id. at 1056. While we need not comment on much less pass upon the constitutionality of the provision at issue in that case, we note that the hold-harmless clause at issue here would cover neither of these situations.

Indeed, in many ways, the reimbursement provision is even more offensive to the First Amendment than the security deposit and insurance requirements struck down by the District Court. An applicant who signed the agreement required by the reimbursement provision would have no way of knowing the scope of the liability to which it might be subjecting itself. Although an applicant can plan for the level of participation by members of its organization, it simply cannot accurately anticipate the actions of others or the anticipated reaction of the police. See, e.g., Terminiello, 337 U.S. at 5; Schneider, 308 U.S. at 162–63; Van Arnam v. Gen. Servs. Admin., 332 F. Supp. 2d 376, 402–03 (D. Mass. 2004). To require an applicant to agree to pay this unquantified fee — which is based substantially on the anticipated and actual reaction of others — before it can speak is an unconstitutional

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We recognize that even a narrowly-confined hold-harmless clause can have an inhibiting effect on speech, particularly speech concerning a controversial subject. See, e.g., Van Arnam v. Gen. Servs. Admin., 332 F. Supp. 2d 376 (D. Mass. 2004). Given the City's acknowledged understanding that the waiver provision, "fairly read," encompasses the hold-harmless clause as well as the application fee and the reimbursement provision, we would expect it to acknowledge, as it has done with regard to the application fee, that the provision should be amended to reflect this reading. See supra note 5. Given the City's interpretation, and the narrow scope of the hold-harmless clause, we agree with the District Court that the clause does not offend the First Amendment.

chilling of speech even if, as the Seventh Circuit remarked, "the fee is calculated with scrupulous precision by a battalion of cost accountants." Church of the Am. Knights, 334 F.3d at 681.

Furthermore, the reimbursement provision is ripe for abuse. In deciding how best to police the event and charge the speaker, the City is given unlimited discretion which could easily be used to punish (or intimidate) speakers based on the content of their messages. Given the substantial expense that could be levied upon a speaker, and the almost limitless possibility of abuse, it is an understatement to conclude that this provision chills constitutionally-protected speech.[10]

III.

For the foregoing reasons, we will affirm in part and reverse in part the order of the District Court and remand for further proceedings.

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[10] We have considered The Nationalist Movement's remaining arguments (that is, those which were at least marginally covered by the disappointing briefs of both parties, see, e.g., United States v. Dunkel, 927 F.2d 955, 956 (7th Cir. 1991)), and find them to be without merit. As such, the District Court's rulings on these matters will be affirmed.

Appendix 17

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 06-2184

THE NATIONALIST MOVEMENT,
Appellant,

v.

CITY OF YORK,
Appellee

APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA
D.C. Civil No. 02-cv-01917
District Judge: The Honorable Yvette Kane, Chief Judge

Argued: January 30, 2007

Before: BARRY and ROTH, Circuit Judges, and DEBEVOISE,* District Judge

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* The Honorable Dickinson R. Debevoise, Senior District Judge, United States District Court for the District of New Jersey, sitting by designation.

Appendix 18

JUDGMENT

This cause came to be heard on the record from the United States District Court for the Middle District of Pennsylvania and was argued on January 30, 2007.

After consideration of all the contentions raised by appellant, it is

ADJUDGED and ORDERED that the order of the District Court be and hereby is affirmed in part and reversed in part, and this matter is remanded for further proceedings. All in accordance with the opinion of this Court. The parties will bear their own costs.

ATTEST:

/s/ Marcia M. Waldron
Marcia M. Waldron, Clerk

Dated: March 21, 2007
Certified as a true copy and issue in lieu
of a formal mandate on April 12, 2007.

Teste: Marcia M. Waldron
Clerk, United States Court of Appeals
for the Third Circuit

Appendix 19

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

THE NATIONALIST MOVEMENT,
Plaintiff

v. **CIVIL ACTION NO. 1:CV-02-1917 (Judge Kane)**

CITY OF YORK,
Defendant

MEMORANDUM AND ORDER

Before the Court are cross motions for summary judgment. (Doc. Nos. 38 and 50.) Having been fully briefed and heard on oral argument, the motions are ripe for disposition.

I. Background[1]

York Ordinance No. 10 ("York Ordinance"), adopted on April 16, 2002, amended Article 741, § 741.03 "Public meetings" of the Codified Ordinance of the City of York, Pennsylvania, to establish a permit requirement for the use of public land and facilities in the City of York (At-

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[1] The following are undisputed facts unless otherwise indicated. (Doc. Nos. 40, 53, 59, and 64.)

tached hereto as Appendix A.) The York Ordinance prohibits persons from conducting any public assembly, parade, picnic, or other event involving more than twenty-five individuals without first obtaining a permit. (Doc. No. 14, Ex. A, York Ordinance § (c); § 741.03(c).)[2] Permits may be obtained by filing a written application for a permit with the Recreation and Parks Bureau. (York Ordinance § (d)1(1); § 741.03(d)(1)A.) "Recreational permits" are also available by written application with the Recreation and Parks Bureau for individuals seeking to reserve park facilities for an event involving less than twenty-five people. (York Ordinance § (d)1(3); § 741.03(d)(3).) Individuals who hold an event in violation of this statute are subject to a $1,000.00 fine or 30 days imprisonment. (York Ordinance § (g); § 741.03(j).)

In order to be considered for a permit, an applicant must first pay an application fee. (York Ordinance § (d)3; § 741.03(d)(5).) The "Basic Permit" fee is $50.00 for city residents and $100.00 for non-residents. (York City Council Resolution No. 56 of Session 2002, Doc. No. 14, Ex. A at 14.) The applicant must also pay a security deposit equal to the "estimated cost of policing, cleaning up, and restoring the park", procure and maintain insurance "in such amounts and with such coverage as shall reasonably be required by the City", agree to reimburse the City for "any such costs incurred by the City" in connection

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[2] The arrangement of York Ordinance No. 10 does not exactly correspond with the arrangement of Article 741 of the Codified Ordinance of the City of York, § 741.03. For clarity, the Court will cite both ordinances.

with the event, and agree to "indemnify the City and hold the City harmless from any liability to any person resulting from any damage or injury occurring in connection with the permitted event proximately caused by the action of the [applicant]". (York Ordinance § (d)4-7; § 741.03(d)(6)-(9).) Prior to August 19, 2003, the York Ordinance also restricted the distribution of literature and the display of signs.

Permit applications are processed in order of receipt. (York Ordinance § (e)1; § 741.03 (e)(1).) Pursuant to section (e)5 of the Ordinance, the City may deny applications that are not fully complete, contain material falsehood, plan activities that would represent an unreasonable danger to the health, safety, or welfare of the public, or if the applicant has not complied with the section (d) requirements. (York Ordinance § (e)5; § 741.03(e)(5).) An application that is deficient in one of the section (d) conditions, but that otherwise complies with all other requirements, will be granted a conditional approval so long as the applicant satisfies all of the section (d) requirements prior to the event. (York Ordinance § (e)2; § 741.03(e)(2).) "If no written denial or conditional approval is issued within fourteen days of the date on which a permit application is fully completed, executed and filed with the appropriate officer or employee . . . the application shall be deemed to have been granted a conditional approval . . . ." (York Ordinance § (e)3; § 741.03(e)(3).) Otherwise, an applicant will receive a written notice of denial clearly specifying the grounds upon which the permit was denied. (York Ordinance § (e)4-5; § 741.03(e)(4)-(5).)However, even if a waiver of the user

fee is issued, the applicant may have to retroactively pay the user fee if the applicant raises sufficient funds during the event. (York Ordinance § (f)3.)

Applicants may apply to the Solicitor's Office for a waiver of the user fee, security deposit, or certificate of insurance if "the activity is protected by the First Amendment of the Untied States Constitution and the requirement would be so financially burdensome that it would preclude the applicant from using Park property for the proposed activity." (York Ordinance § (f)3; § 741.03(f)(3).) If no written denial of waiver is issued within fourteen days, the waiver is deemed approved.[3] (Id.) Any application denied by the City or waiver denied by the Solicitor's Office may be appealed to the Recreation Director who, within seven days, must affirm, modify, or reverse the denial. (York Ordinance § (f)1; § 741.03(f)(1).)

On or about June 14, 2002, the Nationalist Movement ("Plaintiff") submitted an application for a permit to hold a protest of the Martin Luther King, Jr. holiday, in and around York City Hall, on January 20, 2003. On its application, Plaintiff objected to several of the provisions of the York Ordinance, including, inter alia restrictions on distribution of literature, restrictions on the display of signs, the required security deposit, the indemnification

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[3] However, even if a waiver of the user fee is issued, the applicant may have to retroactively pay the user fee if the applicant raises sufficient funds during the event. (York Ordinance § (f)3.)

agreement, the permit fee, and the payment of police and public work services costs. (Doc. No. 14, Ex E.) In protest of the permit fee, Plaintiff did not submit any form of payment for fees or costs required by the application.

By letter dated July 12, 2002, Defendant's Assistant City Solicitor notified Plaintiff that the permit application was being denied as incomplete and for failure to comply with the York Ordinance. On or about July 15, 2002, Plaintiff appealed the denial. On July 25, 2002, Defendant's Director of Public Works affirmed the denial. Thereafter, Plaintiff requested that Defendant's City Council entertain a further appeal. Plaintiff's request was denied.

On August 2, 2002 (Doc. No. 14, Ex. L) and September 3, 2002 (Doc. No. 14 Ex. P), Plaintiff wrote to Defendant requesting a waiver form excusing Plaintiff from paying the application fee. Plaintiff received no response from Defendant to either request for a fee waiver. On October 25, 2002, Plaintiff initiated the instant civil action by filing a Complaint grounded in the First, Fifth and Fourteenth Amendments and for declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202. (Doc. No. 1.) On January 03, 2003, Plaintiff filed a motion to dismiss the Complaint. (Doc. No. 11.) The same day, Plaintiff filed a motion for a temporary restraining order and a preliminary and permanent injunction. (Doc. No. 12.) By Order dated January 10, 2003, the Court scheduled an injunction hearing for January 13, 2003. (Doc. No. 20.) However, prior to the scheduled hearing, Defendant agreed that Plaintiff could hold its event on January 20,

2003 without obtaining a permit and agreed to provide police protection and electricity, for the nominal fee of $1. (Doc. No. 21.) Defendant did not concede any defect in the Ordinance, but represented to the Court that the Ordinance was inapplicable because Plaintiff's gathering was too small. Pursuant to the agreement, Defendant withdrew its motion to dismiss and Plaintiff withdrew its motion for a temporary restraining order. The parties thereafter reported to the Court that Plaintiff's event was held without incident and that fewer than twenty-five people attended Plaintiff's rally.

On August 19, 2003, Defendant amended the York Ordinance, deleting the provisions restricting the circulation of papers and the display of signs. On May 5, 2003, with the permission of the Court, Defendant filed a motion to "Enforce Settlement Agreement or, in the alternative, Motion to Dismiss". (Doc. No. 29.) By Order dated March 23, 2004, the Court denied Defendant's motion.

II. Standard of Review

Summary judgment is proper where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56; White v. Westinghouse Elec. Co., 862 F.2d 56, 59 (3d Cir. 1988). A factual dispute is material if it might affect the outcome of the suit under the applicable law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A factual dispute is genuine only if

there is a sufficient evidentiary basis that would allow a reasonable fact finder to return a verdict for the non-moving party. Id. at 249. The evidence presented must be viewed in the light most favorable to the non-moving party. Id. "The inquiry is whether the evidence presents a sufficient disagreement to require submission to the jury or whether it is so one sided that one party must, as a matter of law, prevail over the other." Id. This standard does not change by virtue of cross-motions being presented. United States v. Hall, 730 F. Supp. 646, 648 (M.D. Pa. 1990).

The moving party has the initial burden of identifying evidence that it believes shows an absence of a genuine issue of material fact. Childers v. Joseph, 842 F.2d 689, 694 (3d Cir. 1988). Once the moving party has shown that there is an absence of evidence to support the nonmoving party's claims, the non-moving party may not simply sit back and rest on the allegations in the complaint. Instead, the non-moving party must "go beyond the pleadings and by [its] own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial." Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). The evidence must be viewed in the light most favorable to the non-movant. See Groman v. Township of Manalapan, 47 F.3d 628, 633 (3d Cir. 1995). Summary judgment should be granted where a party "fails to make a showing sufficient to establish the existence of an element essential to that party's case and on which that party will bear the burden at trial." Celotex, 477 U.S. at 322.

With respect to the sufficiency of the evidence that the nonmoving party must provide, a court should grant summary judgment where the nonmovant's evidence is merely colorable, conclusory or speculative. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249-50 (1986). There must be more than a scintilla of evidence supporting the nonmoving part and more than some metaphysical doubt as to the material facts. Id. at 252; Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986).

III. Discussion

Plaintiff alleges that the York Ordinance violates the First Amendment of the United States Constitution, facially and as applied. Plaintiff also claims that Defendant violated its right to due process and equal protection under the law in not ruling on its request for a waiver of fees. Both parties seek summary judgment in their favor on all counts of the Complaint. The Court will address each claim in turn.

A. Plaintiff's First Amendment Challenge

The First Amendment of the United States Constitution protects speech and other expressive activity in public places, or "government fora," although the degree of protection depends upon the type of forum at issue. Kreimer v. Bureau of Police, 958 F.2d 1242, 1255-56 (3d Cir. 1992). The Supreme Court has identified three types of fora: traditional public fora; designated public fora; and nonpublic fora. Arkansas Educ. Television Comm'n v. Forbes, 523 U.S. 666, 677 (1998). Traditional public

fora consist of streets, parks and public sidewalks long considered as places for public assembly and the communication of ideas. Kreimer, 958 F.2d at 1261. Designated public fora are areas the government has specified for First Amendment activities. Included in this group are "limited public fora," property designated by the government for the exercise of some forms of First Amendment activity, but not all. Id. Nonpublic fora are places "which are not by tradition or designation [fora] for public communication . . . ." Id. at 1255-56 (brackets in original) (quoted case omitted). This third group is the government equivalent of private property. Id. at 1256.

For traditional fora and designated fora, government regulation of First Amendment activities is subject to higher judicial scrutiny than regulation in nonpublic fora. Id. In these areas, prior restraint of First Amendment activity is constitutional only if the regulation does not "delegate overly broad licensing discretion to a government official," Forsyth County v. Nationalist Movement, 505 U.S. 123, 130 (1992), is "justified without reference to the content of the regulated speech, . . . [is] narrowly tailored to serve a significant governmental interest, and leave[s] open ample alternative channels for communication of the information" Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989) (quoted cases omitted). The same standard applies to regulation in limited public fora for First Amendment activities either permitted in that area or consistent with permitted activities. Kreimer, 958 F.2d at 1262. Otherwise, regulation of First Amendment activities in limited public fora and nonpublic fora need only be reasonable and not an effort to suppress commu-

nication based on the speaker's view. Id. at 1256, 1262.

Plaintiff attempts to distinguish the public streets surrounding a city hall from all other governmental fora, arguing that the former "comprise[s] the 'quintessential,' 'classic' public forum" and should therefore be "accorded the utmost protection." (Doc. No. 65 at 8.) Regulation of First Amendment activity on public streets is subject to the highest form of review under Forbes. The Court finds no legal basis for the proposition that a fourth, higher form of governmental fora need be created to protect the area directly surrounding a city or municipal hall. Accordingly, the Court will conduct its review of the York ordinance pursuant to the traditional fora analysis.

1. Facial Challenge

Plaintiff argues that the York Ordinance runs afoul of the First Amendment on its face because it requires an application fee, a security deposit, and insurance coverage prior to approval, and grants the city officials undue discretion in determining the amount of each of the above. Plaintiff also objects to the indemnification requirement, arguing that the hold-harmless provision makes speech, and especially controversial speech, available only to those individuals wealthy enough to assume the risk of liability.

The Supreme Court has long held that a state may require, as a prerequisite to engaging in expressive activity on public land, that a permit applicant pay fees to defray government costs directly attributable to the speech

activity. Cox v. New Hampshire, 312 U.S. 569 (1941). The Court has reasoned that such costs are allowable because the government has a substantial interest in "coordinating multiple uses of limited space" that implicates an applicant's interest in the use and enjoyment of that space. Thomas v. Chicago Park District, 534 U.S. 316, 323 (2002). The Cox Court upheld a fee that ranged from "$300 to a nominal amount" and that was intended "to meet the expense incident to the administration of the [licensing] act and to the maintenance of public order in the matter licensed." 312 U.S. at 576-77. However, courts have since struck down permit schemes that grant city officials too broad a degree of discretion during the application approval process or in setting fee amounts. See Forsyth County, 505 U.S. at 131-33 (invalidating permit fee requirement because of the unbridled discretion granted to the county administrator).

In Forsyth County v. Nationalist Movement, the Supreme Court noted that an ordinance requiring a permit and a fee as a precondition to authorizing speaking, parades, or assemblies in a public forum is formally a prior restraint on speech and that there is a "heavy presumption" against the validity of a prior restraint. 505 U.S. at 130. Notwithstanding this presumption, the Forsyth Court recognized that permit and fee requirements may be imposed by the government in order to regulate competing uses of public forums, so long as the government officials do not have overly broad discretion in determining when to apply the fee and in what amount. Id.

Recently, in Thomas v. Chicago Park, the Supreme

Court upheld an ordinance that required a person to obtain a permit in order to "conduct a public assembly, parade, picnic, or other event involving more than fifty individuals," or engage in an activity such as "creating or emitting any Amplified Sound" on public land. 534 U.S. at 318. The permit statute in Thomas was substantially similar to that challenged in this case, as were the specified grounds for rejection of a permit under the Chicago ordinance. Compare Thomas, 534 U.S. at 318-19, 319 n.1 with York Ordinance § (e)5 (§ 741.03(e)(5)). The Supreme Court noted that:

> the object of the permit system (as plainly indicated by the permissible grounds for permit denial) is not to exclude communication of a particular content, but to coordinate multiple uses of limited space, to assure preservation of the park facilities, to prevent uses that are dangerous, unlawful, or impermissible under the Park District's rules, and to assure financial accountability for damage caused by the event.

Id. at 322. However, in assessing the appropriateness of the permitting scheme as a time, place, and manner regulation, the Supreme Court opined that "even content-neutral time, place, and manner restrictions can be applied in such a manner as to stifle free expression" where the licensing official enjoys unduly broad discretion in determining whether to grant or deny a permit. Id. at 323 (citing Forsyth, 505 U.S. at 131).

It is well established that a permit scheme regulating the time, place, and manner of speech will be upheld so long as the ordinance: (1) does not "delegate overly broad licensing discretion to a government official," (2) is content-neutral, (3) is narrowly tailored to serve a significant governmental interest, and (4) leaves open ample alternatives for communication. Forsyth, 505 U.S. at 130; Wade [sic] v. Rock against Racism, 491 U.S. 781, 790-791 (1989). Thomas instructs that, with regard to this first prong, a permit scheme must also contain adequate standards to guide the licensing official's decision and provide for effective judicial review. Id.

A regulation is "narrowly tailored if it targets and eliminates no more than the exact source of the 'evil' it seeks to remedy." Frisby v. Schultz, 487 U.S. 474, 485 (1998) (quoting City Council of Los Angeles v. Taxpayers for Vincent, 466 U.S. 789, 808 (1984)). The ordinance need not be the least restrictive means available, merely "not substantially broader than necessary to achieve the government's interest." Id. The "essence of narrow tailoring" is that the ordinance must "focus[] on the source of the evils the city seeks to eliminate . . . and eliminate[] them without at the same time banning or significantly restricting a substantial quantity of speech that does not create the same evils." Id. at 800 n.7.

A. Permit Fee

In the instant matter, the York officials have no discretion with regard to the permit fee, as the nominal fee for a basic permit is fixed at $50 for city residents and

$100 for non-residents. (York Ordinance, Resolution No. 56, Fee Schedule.) Different fees apply for use of certain city facilities within park grounds, but these fees are fixed based upon the facility reserved and the number of people attending, not based upon the purpose of the event or content of the message. Id. Unlike the permit fee system that the Supreme Court found unconstitutional in Forsyth, the instant user fee is not variable so as to allow for discretionary abuse by city officials. Forsyth, 505 U.S. at 134-36. Moreover, under section (f) subsection 3 of the York Ordinance, the city must waive the permit fee upon a showing that the fee would "be so financially burdensome that it would preclude the applicant from using Park property for the proposed activity." (York Ordinance § (f)3; § 741.03(f)(3).) If the applicant provides objective evidence of an inability to pay, the ordinance provides city officials no discretion in deciding when to apply the waiver. Because the nominal user fee leaves no discretion to the official, does not base the amount charged on the content of the message, is narrowly tailored to allow the city only to recover the incidental cost of processing the application, and makes provisions for groups unable to pay, the user fee does not facially violate the First Amendment. Forsyth, 505 U.S. at 130. Accordingly, Defendant's motion for Summary Judgment on this claim will be granted.

B. Insurance and Security Deposit Requirements

The York Ordinance requires applicants, as a prerequisite to obtaining a permit, to pay a security deposit in an amount "in accordance with the schedule of fees set by

the Recreation Director and approved by City Council. The amount of the security deposit set in the schedule of fees shall be equal to the estimated cost of policing, cleaning up, and restoring the park upon the conclusion of the use or activity." (York Ordinance § (d)5; § 741.03(d)(7).) Similarly, applicants must procure insurance "in such amounts and with such coverages as shall reasonably be required by the City . . . . The amounts and type of insurance required shall be determined by the Public Works Department, based upon the nature of the activity and the risk involved" and will be listed in a "uniform schedule of insurance guidelines for particular types of activities." (York Ordinance § (d)7; § 741.03(d)(9).) On April 16, 2002, the City Council of York adopted a schedule of fees as required by the York Ordinance. (York City Council Resolution No. 56 of Session 2002, Doc. No. 14, Ex. A at 14.) This schedule of fees establishes the application permit fee, classifies the City park property, and provides that "[a]pplicants shall also be responsible for all charges incurred for Police, Fire, and Public Works services for all permits issued. A security deposit equal to the estimate cost of Policing [sic], clean up, and restoring the park is required in advance of the event .. . ." (Id.) The record contains no further guidelines specifying how this estimate is calculated or any guidelines as to the amount and type of insurance required.

A permit licensing official may not have "unduly broad discretion" in determining whether to grant or deny a permit. Thomas, 534 U.S. at 321 (citing Forsyth, 505 U.S. at 131). Rather, the regulation must contain "ade-

quate standards" to guide the official's decisions. Id. The Thomas Court focused on the local official's discretion to grant or deny applications under the Chicago ordinance. In its papers, Defendant relies heavily upon the holding of Thomas v. Chicago Park, as the York Ordinance closely mirrors the Chicago ordinance upheld by the Supreme Court. (Compare Doc. No. 14 Ex. A with Doc. No. 60 Ex. 1.) In fact, the structure and language of the two ordinances are nearly identical. Both ordinances require an application fee, facility fee, security deposit, indemnification agreement, and insurance prior to approval of the permit. Both ordinances also provide procedures for review and the waiver of the user fee, security deposit, and/or certificate of insurance. However, unlike the York Ordinance, the Chicago Ordinance contains a schedule of fees establishing guidelines for the amount of insurance required, setting the insurance amount on the size of the event and the nature of the facilities involved. Thomas v. Chicago Park District, 227 F.3d 921, 925 (7th Cir. 2000) ("Thomas II").

Moreover, the appellants in Thomas did not challenge the provisions of the Chicago ordinance that required fees, insurance, indemnity, and a security deposit prior to approval of the permit, nor did the Thomas court directly address these provisions of the Chicago ordinance. See Petition for Writ of Certiorari, Thomas v. Chicago Park Dist., 2001 WL 34091941 (February 1, 2001).[4] Contrary

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[4] The Thomas Court focused on the local official's discretion to grant or deny applications under the Chicago ordinance.

to Defendant's reliance, the Thomas court did not ratify each and every provision of the Chicago Ordinance, thus rendering any ordinance that mirrors it immune from constitutional attack.

This notwithstanding, the Supreme Court does cite approvingly the government's legitimate interest in "assur[ing] financial accountability for damage caused by the event." Thomas, 534 U.S. at 780. Moreover, in the underlying decision affirmed by the Supreme Court in Thomas, the Seventh Circuit Court of Appeals upheld the Chicago ordinance's insurance requirement because:

> the amount of insurance required is not based on, or . . . influenced by, the nature of the event, and specifically by whether it involves controversial expressive activity likely to incite violence by onlookers or opponents. The required amount and the cost of the insurance depend only on the size of the event and the nature of the facilities involved in it (a bandstand, stage, tents, and so forth).

Thomas II, 227 F.3d at 925. Similarly, the Ninth Circuit Court of Appeals found no First Amendment violation where a park required applicants to post a bond for liability insurance to cover equipment damage or liability resulting from the planned event's "unanticipated effects" on event attendants, because:

> [t]he bond requirement is con-

> tent-neutral in that it is applied to every applicant regardless of the nature of the expression or content of the message they wish to convey. It furthers a significant governmental interest: the protection and maintenance of an expensive sound system. It is narrowly tailored to meet that goal by requiring most applicants to post the bond. Finally, the bond requirement does not completely close off an applicant's opportunities for expressive activity; an applicant who cannot afford to or does not want to post the bond may conduct many other types of expressive activity in the park.

Gerritsen v. City of Los Angeles, 994 F.2d 570, 578-79 (9th Cir. 1993), cert. denied, 510 U.S. 915 (1993).

In an unpublished opinion applying the Thomas analysis to a Harrisburg city ordinance governing the use of the city's parks, the Third Circuit Court of Appeals found:

> the City has a substantial interest in ensuring that the public's health, welfare, safety or enjoyment of the park will not be compromised by a proposed use of the park. Accordingly, any proposed event that might result in violence, criminal activity or disorderly conduct should be denied a permit, as should any event which poses extraordinary, bur-

densome financial obligations on the City of Harrisburg.

Diener v. Reed, 77 Fed. Appx. 601, 607 (3d Cir. 2003). The Third Circuit upheld the Harrisburg ordinance's permit scheme as content-neutral time, place, and manner restrictions narrowly tailored to serve a significant governmental interest. The Court also rejected the as-applied challenge to the provisions because it found the "exclusion of Appellants . . . [was] contentneutral, based on their behavior, not the content of their speech." Id. at 609.[5] As distinguished from the ordinance upheld in Diener, the York Ordinance does not establish a security deposit schedule and provides no guidance in calculating the prerequisite insurance coverage, nor what factors Defendant should consider when determining the amounts required.

Unlike the ordinance challenged in Thomas, the York Ordinance is not replete with guidelines calculating the insurance requirement based upon the size of the event and the nature of the facilities involved. 227 F.3d at 925. Instead, York officials are vested with the unbridled discretion to set the insurance requirement and security deposit based upon the content of the message or their own opinions about the speaker. The statute contains no guidelines as to the amount and type of insurance converge

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[5] Here again, the Appellate Court upheld the official's discretionary power as it applied to granting or denying the permit, but did not directly address the constitutionality of the fiscal prerequisites at issue here.

required, leaving such a determination wholly up to the city official's discretion. The Ordinance requires the Public Works Department to prepare "a uniform schedule of insurance guidelines for particular types of activities", yet the record contains no such schedule. Unlike the Chicago Ordinance wherein a schedule established insurance requirements "only on the size of the event and the nature of the facilities involved in it[,]" York officials are free to base the insurance requirement on the group's reputation. Thomas II, 227 F.3d at 925.

Without specific guidelines calculating the insurance and deposit requirements using content-neutral factors, thereby limiting the scope of the city officials' discretion, these provisions contain "the possibility of censorship through uncontrolled discretion." Id. at 133. In fact, Defendant admits that city officials base these figures upon the reputation of the speaker. (Oral Argument Transcript at 46-7.)[6] The Supreme Court has routinely held that

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[6] The practical effect was explained by Defendant during oral argument. Counsel for Defendant represented to the Court that "the amount of the security deposit is set and should equal to the estimate cost of policing, cleaning up, and restoring the park upon the conclusion of the use or activity." (Oral Argument Transcript at 46 ¶¶ 16-19.) Defendant conceded that it examines the nature of the event, rather than the mere size of the event or the facilities intended to be used, in determining the cost of the deposit on the theory that certain events require more police presence. The Ordinance offers no objective standard by which such an assessment might be made. Antici-

"[r]egulations which permit the Government to discriminate on the basis of the content of the message cannot be tolerated under the First Amendment." Forsyth, 505 U.S. at 135 (citing Regan v. Time, Inc., 468 U.S. 641, 648-649 (1984); Simon & Schuster, Inc. v. Members of N. Y. State Crime Victims Bd., 502 U.S. 105, 116, (1991); Arkansas Writers' Project, Inc. v. Ragland, 481 U.S. 221, 230 (1987)). Without content-neutral guidelines limiting city officials' discretion in this regard, the York Ordinance allows the city to unconstitutionally "charg[e] a premium in the case of a controversial political message delivered before a hostile audience." Forsyth, 505 U.S. at 136. Accordingly, Article 741 of the Codified Ordinances of the City of York, Pennsylvania, Section 741.03, subsection (d)5 and subsection (d)7 -- the insurance and security deposit provisions -- are facially unconstitutional

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patory cleanup costs and police estimates under the York Ordinance appear to be based merely upon the city's estimation of an applicant's reputation and the unpopularity of the group's message. (Oral Argument Transcript at 46.) If York officials assume that unpopular organizations will inherently require a higher police presence and greater cleanup costs, as counsel suggests, then speakers with unpopular messages will be required to deposit much more money prior to speaking than groups with better "reputations". (Oral Argument Transcript at 46-7.) This content based scheme not only grants broad discretion to city officials, but also threatens to dissuade unpopular groups from utilizing traditional public forums by placing a premium on – what the city views as -- unpopular speech.

and cannot be enforced. Therefore, Plaintiff's motion for summary judgment with regard to these claims will be granted.

C. Indemnification and Reimbursement Agreement

In addition to requiring proof of insurance and a security deposit, the York Ordinance further requires applicants to sign an indemnification and reimbursement agreement, wherein:

> the applicant shall promise and covenant to bear all costs of policing, cleaning up, and restoring the park upon conclusion of the event or activity; to reimburse the City for any such costs incurred by the City; and to indemnify the City and hold the City harmless from any liability to any person resulting from any damage or injury occurring in connection with the permitted event proximately caused by the action of the permittee, the sponsoring organization, its officers, employees or agents or any person under their control insofar as permitted by law.

(York Ordinance § (d)4; § 741.03(d)(6).) Within the application itself, the applicant must sign and agree, inter alia:

> to reimburse the City of York for any

> additional costs of clean-up and restoration of the park upon conclusion of the event described above [and] to indemnify and hold the City of York harmless from any liability to any person resulting from any property damage or personal injury occurring in connection with the event caused by the applicant or the sponsoring organization, its officers, employees, or any person under its control.

(Doc. No. 14, Ex. E.) This provision mirrors that of the Chicago Ordinance. (See Doc. No. 60, Ex. 1.)

A municipality has a legitimate interest in "assur[ing] financial accountability for damage caused by [an] event" on public land, and may enact content-neutral time, place, and manner regulations narrowly tailored to serve this interest. Thomas, 534 U.S. at 779-80. "'To allow unregulated access to all comers could easily reduce rather than enlarge the park's utility as a forum for speech.'" Id. at 780 (quoting Thomas II, 227 F.3d at 924.) Accordingly, the City of York has a legitimate interest in limiting liability caused by the actions of event organizers and seeking reimbursement for damage to park grounds and facilities.

Unlike other indemnity provisions which have been struck down by lower courts, the York Ordinance's hold-harmless provision does not include injury resulting from the actions of counter-demonstrators, thereby allow-

ing a heckler's veto.[7] See Van Arnam v. General Services Administration, 322 F. Supp. 2d 376, 395-407 (D. Mass 2004) (finding unconstitutional a hold harmless provision indemnifying the government from "any and all loss, damage, claim or liability whatsoever . . . directly or indirectly due to the exercise by the licensee" of the permit). Instead, the indemnification agreement indemnifies only those injuries proximately caused by the actions of the applicant. Thus, applicants with unpopular messages have no more risk under this provision than a speaker with popular views.

There is nothing in the record to support a finding that York officials are enforcing the reimbursement agreement differently based upon the content of the speech. Unlike estimated costs calculated before the event, which without adequate standards could be applied so as to stifle unpopular speech, the above provision requires reimbursement of only those actual costs incurred by the municipality in connection with the event. (York Ordinance § (d)4; § 741.03(d)(6).)

The reimbursement and hold-harmless provision does not, on its face, restrict, inhibit, or discourage free speech in public forums. The provision does not grant the city officials broad discretion, is content-neutral, and is nar-

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[7] Under Pennsylvania law, hold-harmless provisions are strictly construed against the party seeking their protection and limited in scope to matters expressly covered therein. Fulmer v. Duquesne Light Co., 543 A.2d 1100, 1103 (Pa. Super. 1988).

rowly tailored to achieve the significant government interests of protecting public property while reasonably shielding the city from liability. Accordingly, Defendant's motion for summary judgment with regard to this claim will be granted.

E. Severability

When a federal court is called upon to invalidate a local ordinance, the severability of the constitutional portions of the ordinance are governed by state law, here the law of Pennsylvania. City of Lakewood v. Plain Dealer Pub. Co., 486 U.S. 750, 772 (1988); Contractors Assn. of Eastern PA., Inc. v. Philadelphia, 6 F.3d 990, 997 (3d Cir. 1993). Generally, the severability of a statute is a question of legislative intent as to the specific provision. Rappa v. New Castle County, 18 F.3d 1043, 1072 (3d Cir. 1994). Pennsylvania law favors severability. Contractors Assn. of Eastern Pa. v. City of Philadelphia, 6 F.3d 990, 997 (3d Cir. 1993). Pennsylvania has a general severability statute that reads:

> The provisions of every statute shall be severable. If any provision of any statute or the application thereof to any person or circumstance is held invalid, the remainder of the statute, and the application of such provision to other persons or circumstances, shall not be affected thereby, unless the court finds that the valid provisions of the statute are so essentially and inseparably connected

> with, and so depend upon, the void provision or application, that it cannot be presumed the General Assembly would have enacted the remaining valid provisions without the void one; or unless the court finds that the remaining valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

1 Pa. Const. Stat. Ann. § 1925 (Supp. 2005). Additionally, there is a presumption in favor of severability where, as here, the ordinance contains a specific severability provision. Contractors Assn. of Eastern Pa., 6 F.3d at 997. The York Ordinance's severability provision provides in pertinent part that "[i]f any provision of this ordinance or the application thereof to any person or circumstance be held invalid, the remainder of this ordinance and the application of such provision to other persons or circumstances shall not be affected thereby." (York Ordinance § (h).)

Equipped with these principles, the Court must decide whether the York Ordinance's provisions "are distinct and not so interwoven as to be inseparable." Saulsbury v. Bethlehem Steel Co., 196 A.2d 664, 666 (1964). The Court does not find that the unconstitutional provisions are inseparable from the ordinance as a whole. These provisions are merely independent prerequisites to final approval of a permit. The unenforceability of these sections do not affect the city's power to enforce the remainder of the permit scheme. Subsections (d)5 and (d)7 of the York

Ordinance (subsections (d)(7) and (d)(9) of § 741.03) are severable from the remainder of the ordinance. Accordingly, the statute remains enforceable except for the provisions found unconstitutional herein.

2. As-applied Challenge

Plaintiff argues that Defendant's application of the statute with regard to Plaintiff violated its First Amendment rights. Plaintiff alleges that Defendant is hostile towards its organization and denied its permit due to the content of the planned event and the nature of the organization. In support thereof, Plaintiff offers two affidavits by individual supporters testifying on the adverse political climate in the City of York. (Doc. Nos. 62-63.) Plaintiff states, without citation or reference to the record, that "City officials had made their opposition to 'racism' clear through pronouncements and involvement in the York Unity events, including a rally at City Hall." (Doc. No. 64 at 3.) Moreover, Plaintiff contends, without citation or reference to the record, that "Mr. Musso, author of the measure, has stated that the law was promulgated specifically run out of town [sic] those whose speech and beliefs he disagreed with." (Doc No. 39 at 14.) Plaintiff offers two letters, dated August 2, 2002 (Doc. No. 14, Ex. L) and September 3, 2002 (Doc. No. 14 Ex. P), allegedly sent to Defendant wherein Plaintiff requests waiver forms. Plaintiff argues that Defendant's refusal to respond to these letters or provide the requested waiver forms demonstrates an animus towards the organization. (Doc. No. 39.)

Plaintiff neglects to report that it refused to pay the basic permit fee and it was for this reason that its permit was denied. (Plaintiff's Application, Doc. No. 14, Ex. E.) The notations written on the permit application and correspondences sent to Defendant by Plaintiff's counsel clearly indicate a refusal to pay the administrative fee required of all applicants. (Doc. No. 14, Exs. E, F, and G.) Failure to pay the permit fee is one of the enumerated grounds for denial of the application. (York Ordinance § (e)5(2); § 741.03(e)(5)(B).) The record is clear that Defendant's requests for a waiver form were sent only after the application had been denied and its appeal denied. The Court finds no evidence of record that other organizations similarly situated were treated more favorably than Plaintiff.[8] Defendant's denial of Plaintiff's application was based upon constitutionally enforceable provisions of the York Ordinance and was contentneutral, based on lawful

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[8] A court should "generally not invalidate a waiver provision for overly broad discretion unless and until there is a showing of a pattern of unlawful favoritism. To do otherwise would have the unintended effect of restricting more speech because [the municipality] could not relax its permitting rules to increase access to the forum. A rigid application of the permitting scheme would prevent any group with an emergent need, or any speaker with the inability to pay the permit fee, to use [public land] for speech activities. It is undoubtedly preferable to allow some flexibility in the name of increasing the exercise of protected speech." Parks v. Finan, 385 F.3d 694, 700 (6th Cir. 2004) (internal quotation marks omitted).

procedure, not the content of Plaintiff's speech. Similarly, Plaintiff puts forth no evidence that Defendant has ever used the indemnity provision to protect itself, let alone applied the provision differently to different groups based upon the content of their message. Accordingly, Defendant's motion for summary judgment regarding the as-applied claims will be granted.

B. Equal Protection

While the Equal Protection Clause "is essentially a direction that all persons similarly situated should be treated alike," City of Cleburne v. Cleburne Living Ctr., Inc., 473 U.S. 432, 439 (1985), the Supreme Court has clarified that "equal protection does not require that all persons be dealt with identically, but it does require that a distinction made have some relevance to the purposes for which the classification is made." Baxstrom v. Herold, 383 U.S. 107, 111 (1966); Walters v. City of St. Louis, 347 U.S. 231, 237 (1954). Further, the "Equal Protection Clause requires that statutes affecting First Amendment interests be narrowly tailored to their legitimate objectives." Police Dep't of the City of Chicago v. Mosley, 408 U.S. 92, 101 (1972).

Plaintiff argues that the York Ordinance's fee scheme violates the Fourteenth Amendment to the United States Constitution, in that the ordinance "sets up a classification for the enjoyment of constitutional rights - those who can afford to pay versus those who cannot . . . . [and] differentiate[s] between 'residents' and 'non-residents' in its license fees." (Doc. No. 39 at 12.) Plaintiff's Equal

Protection claims are functionally identical to its First Amendment claims against the same provisions of the York Ordinance. As the Third Circuit recently opined in Hill v. City of Scranton,

> "it is generally unnecessary to analyze laws which burden the exercise of First Amendment rights by a class of persons under the equal protection guarantee, because the substantive guarantees of the [First] Amendment serve as the strongest protection against the limitation of these rights." If a law passes muster under the First Amendment it is also likely to be upheld under the Equal Protection clause. Likewise, if a law violates First Amendment rights there is no need to resort to the Equal Protection clause to redress the constitutional violation.

411 F.3d 118, 126 (3d. Cir. 2005) (quoting Ronald Rotunda & John Nowak, 3 Treatise on Constitutional Law: Substance and Procedure § 18.40, at 796 (3d ed. 1999) (internal citations omitted); see also San Filippo v. Bongiovanni, 30 F.3d 424, 430 n.6 (3d Cir. 1994) (where the Third Circuit followed the same approach but did not provide an explanatory discussion because in that case "the parties agree[d] that the analysis is the same under the first amendment and equal protection claims").

For the reasons discussed above, this Court finds that

the York Ordinance's user fee scheme does not violate the First Amendment on its face. The nominal permit fee reimburses the city for the incidental cost of processing the application. Moreover, the de minimis reduction in that fee for city residents furthers the legitimate government purpose of encouraging city residents to hold events locally within the city. Further, city residents already fund the York recreational department through the taxes they pay. Accordingly, upon careful review of the ordinance fee structure, the Court finds no violation of the constitutional guarantee of equal protection under the law.

To the extent that Plaintiff also alleges that Defendant violated its rights to due process and equal protection in applying the fee scheme - that is to say, Defendant allegedly waives fees for favored speakers but denies such waivers for disfavored speakers, such as Plaintiff - this claim is identical to Plaintiff's First Amendment as-applied claim. (Doc. No. 39 at 12.) A finding that Defendant ignored Plaintiff's waiver requests in order to prevent the group from conducting a rally would demonstrate a First Amendment violation and invalidate the provision. If the finder of fact found that Defendant did not violate the ordinance's waiver procedure with respect to Plaintiff's request so as to trigger a First Amendment violation, then Plaintiff would have received all the process due under the Fourteenth Amendment.[9] Hill, 411

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[9] Moreover, pursuant to the Local Agency Law, 2 Pa. Cons. Stat. Ann. § 752, et seq., Plaintiff was entitled to a second review of his denial by the state courts, an avenue Plaintiff chose not to pursue.

F.3d at 126. As discussed more fully in the First Amendment section above, Plaintiff puts forth no evidence demonstrating that other organizations who also refused to tender the permit fee were treated more favorably than Plaintiff. Accordingly, Defendant's motion for summary judgment in this regard will be granted and Plaintiff's Equal Protection and Due Process claims will be dismissed.

C. Void for Vagueness

Plaintiff argues that the York Ordinance violates the Fourteenth Amendment because it lacks "sufficient definiteness" so as to allow "those seeking to speak in the public forum to know whether they risk criminal sanctions." (Doc. No. 39 at 12-13.) Plaintiff's terse two sentence argument for summary judgment on this claim fails to indicate which provisions of the York Ordinance suffer from vagueness. In Count III of the Complaint, Plaintiff alleges that the ordinance provisions requiring insurance, imposing fees, and establishing the procedures for application approval are unconstitutionally vague. (Doc. No. 1 at 30-1.)

The permit and facility fee scheme contains fixed amounts for the different available permits in a format easily understood by the average applicant. (York Ordinance, Resolution No. 56, Fee Schedule.) Similarly, the ordinance clearly lists the grounds upon which the city may deny an application and the procedure for review. (York Ordinance §§ (e)-(f); § 741.03(e)-(f).) With regard to the insurance and security deposit requirements, Plain-

tiff's claims again mirror those claims already brought pursuant to the First Amendment. Accordingly, Defendant's motion for summary judgment in this regard will be granted and Plaintiff's claim that the York Ordinance is void for vagueness will be dismissed.

D. Overbreadth

In Count IV of the Complaint, Plaintiff argues that the York Ordinance is unconstitutionally overbroad. (Doc. No. 1 at 31-32.) A regulation is unconstitutional on its face on overbreadth grounds "where there is 'a likelihood that the statute's very existence will inhibit free expression' by ' inhibiting the speech of third parties who are not before the Court.'" Saxe v. State College Area Sch. Dist., 240 F.3d 200, 214 (3d Cir. 2001) (quoting Members of City Council v. Taxpayers for Vincent, 466 U.S. 789, 799 (1984)). In order to render a law unconstitutional, "the overbreadth must be 'not only real but substantial in relation to the statute's plainly legitimate sweep.'" Saxe, 240 F.3d at 214 (quoting Broadrick v. Oklahoma, 413 U.S. 601, 615 (1973)). In Lakewood v. Plain Dealer Publ'g Co., 486 U.S. 750, 751, (1988), the Supreme Court set forth a two-part test governing when a First Amendment facial challenge may be made to an allegedly overbroad licensing scheme. First, the regulation must confer upon a governmental official or agency "substantial power to discriminate based on the content or viewpoint of speech by suppressing disfavored speech or disliked speakers." Lakewood, 486 U.S. at 759. Second, "the law must have a close enough nexus to expression, or to conduct commonly associated with expression, to

pose a real and substantial threat of the identified censorship risks." Id.

This claim mirrors Plaintiff's First Amendment Freedom of Expression claim. As discussed more fully above, municipalities may require that organizations obtain a permit prior to engaging in expressive activity on public land. Cox, 312 U.S. at 577. The provisions of the York Ordinance found to grant city officials too great discretion so as to permit suppression of disfavored speech, have already been found by this Court to be unconstitutional. The remainder of the York Ordinance is a content-neutral time, place, and manner restriction allowable under the First Amendment. See Section III(a) supra. Accordingly, Defendant's motion for summary judgment in this regard will be granted and Plaintiff's overbreadth claim will be dismissed.

E. Freedom of Association

In its Complaint, Plaintiff also alleges that the York Ordinance violates its right to freedom of association.[10] (Doc. No. 1, Count IX.) Specifically, Plaintiff alleges that "its organizing efforts [have been] hindered, it ability to associate together for the common purpose of recruiting, discussion and advocacy on matters of public interest have been hindered and its efforts to garner support for its agenda have been hampered." (Doc. No. 1, ¶ 68.) Again,

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[10] Although both sides seek summary judgment on all counts of the Complaint, neither side directly briefed this issue.

Plaintiff's claim mirrors its First Amendment Freedom of Expression claim. Defendant's alleged hindrance is entirely within the context of preventing Plaintiff from rallying on the capital steps without a permit. Plaintiff alleges no further action taken by Defendant attempts to prevent Plaintiff's members from meeting on private land or associating with each other in any other context. Accordingly, Defendant's motion for summary judgment in this regard will be granted and Plaintiff's claim will be dismissed.

F. Conclusion

For the reasons discussed above, the Court finds that Article 741 of the Codified Ordinances of the City of York, Pennsylvania, Section 741.03, subsection (d)(7) and subsection (d)(9), violate Plaintiff's First Amendment right to freedom of expression and are therefore unenforceable as written. The Court finds that the remainder of the ordinance is constitutional on its face and as applied to Plaintiff. Plaintiff's equal protection, void-for-vagueness, overbreadth, and freedom of association claims will also be dismissed.

IV. Order

AND NOW, this 24 day of March, 2006, **IT IS HEREBY ORDERED THAT** the Plaintiff's Motion for Summary Judgment is **GRANTED** in part and **DENIED** in part. Plaintiff's Motion for Summary Judgment is granted as to Count II of the Complaint. **IT IS HEREBY DECLARED** that Article 741 of the Codified Ordi-

nances of the City of York, Pennsylvania, Section 741.03, subsection (d)(7) and subsection (d)(9) are unconstitutional as written. In all other respects, Plaintiff's motion is denied.

Defendant's Motion for Summary Judgment is **GRANTED** in part and **DENIED** in part. Defendant's motion is granted with regard to: Plaintiff's First Amendment challenges to all other aspects of the Ordinance; Plaintiff's claims of denial of Equal Protection and Due Process; and Plaintiff's challenge to the Ordinance as void for vagueness and overbroad. Accordingly, Counts I, III, IV, V VI, VII, VIII and IX of the Complaint are **HEREBY DISMISSED**. In all other respects, Defendant's motion is denied. The Clerk of Court is directed to **CLOSE** the file.

S/ Yvette Kane
Yvette Kane
United States District Judge

Dated: March 24, 2006

YORK DAILY RECORD

Council to peace group: Don't protest in public

■ A recent city law could prevent the group's assembly.

3-9-03

By ANDREW BROMAN
Daily Record staff

York City Council President Mary Anne Bacas and Councilman Joe Musso advised an anti-war group Tuesday night to avoid gathering in public places one day after Mayor John Brenner's administration declared Sunday's protest illegal.

Brenner's director of community development, Abe Amoros, said the police would have the right to break up a gathering of larger than 25 people if protesters failed to obtain a permit from City Hall.

Without a permit, nearly 125 protesters met Sunday on Continental Square during a peaceful gathering involving singing and prayer.

Leada Dietz, the head of People for Peace, said the city might force the group down a path of having to exercise civil disobedience to defend its First Amendment rights.

People for Peace is expecting to protest as soon as President Bush declares war. But, Brenner's administration requires groups provide two weeks' notice, pay a $50 application fee and show proof of insurance.

Dietz said the group wouldn't have time to give two weeks' notice and wouldn't have the $50. Amoros said the city could waive the fee after the city's solicitor reviewed the group's application.

Bacas told Dietz, "Don't hold it in public." She said to have a demonstration on private property, such as at a church.

Musso echoed those sentiments.

The law was set up, in part, to give city officials more leverage in managing racist groups demonstrating in York. Musso drafted it while the Aryan Nations was considering a York demonstration. But, the council couldn't pass the law fast enough to respond to that group's 2002 visit. City Hall sought to deny the group a permit by claiming it paid an incorrect fee.

The council did pass the law in time for another racist group's January visit, this time led by Richard Barrett of the Mississippi-based Nationalist Movement. Barrett was prepared to fight City Hall in court, and City Hall backed down after concluding that Barrett would bring fewer than 25 people, the threshold for requiring a permit.

Over the past three years, city council has crafted three laws criticized for violating the Constitution. Judges in two cases struck down laws, one making loitering illegal and another make the harboring of farm animals illegal. In both cases, judges ruled that the council was targeting legal activities.

In both cases, the city's solicitor, Steve Hovis, advised the council to enact those laws. On Tuesday, Hovis told Dietz that she wouldn't have been expected to obtain a permit for Sunday's protest.

Dietz said she sent e-mails out to group members, but had no way of knowing 125 people would show. Amoros said she should now expect more than 25 people to appear.

The administration's fear is that by failing to enforce its law against the anti-war protesters, it wouldn't be able to enforce it against other groups.

"We don't want to set a precedent," Amoros said.

Reach Andrew Broman at 771-2035 or abroman@ydr.com.

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SUNDAY'S CANDLELIGHT VIGIL

Peace rally violated city's public meeting ordinance

3-18-03

By MIKE HOOVER
Dispatch/Sunday News

A Sunday evening candlelight vigil in Continental Square to promote peace violated York City's public assembly ordinance because demonstrators failed to get permits to hold such a gathering.

Any group of more than 25 people must have a permit, according to a city ordinance adopted last April in response to appearances by white supremacist groups.

"They were required to get a permit. No exceptions," said Abe Amorós, the city's public information officer.

See RALLY/A9

GREG MAHANY/STAFF PHOTOGRAPHER

Dawn Walton of York and Craig Bauer of Spring Garden Township joined more than 100 others Sunday evening for a rally at Continental Square in York.

■ White supremacist offers settlement to York City over rally dispute. Page C1

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Many attend rolling vigil

Almost 125 people from the York area gathered on Continental Square to advocate peace.

By ANDREW BRONAN
Daily Record staff
Monday, March 17, 2003

Soon after President George Bush declared that "a moment of truth for the world" had arrived, nearly 125 anti-war protesters formed a ring around the World War II memorial in York in a last-ditch plea for peace Sunday.

Tyler Schieb, 7, of Springettsbury Township sits on his mother's shoulders to show his opposition for the war on Continental Square in York. Tyler and his mother, Dayna, were at their first protest.

They sang for peace to the beat of Ruth Fitz's guitar and Chris Davis' drum on Continental Square. Sunday's protest was one of the largest in York since Bush went to the United Nations to demand Iraq's disarmament last year. His war talk is frightening, almost surreal, several people said.

"I can't listen to the news," Dawn Mogren, 72, said. "It's rather difficult. I've just lost a lot of faith in the politics of the regime, I want to say. I don't know what else to call it."

The York resident joined the chorus: "He's got the whole world in his hands. He's got the whole world in his hands."

Speaking of the summit in the Azores, Linda Martin, 55, said, "the news today is not good."

A protest organizer, Leada Dietz, told the crowd to prepare for an "emergency meeting" in the event of war. She didn't elaborate on it Sunday, saying she wanted to focus everybody's energy on preventing a war.

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Iraq has a last chance to disarm and then it's war, Bush said during an afternoon news conference.

"Action to remove the threat from Iraq would also allow the Iraqi people to bu future for their society," he said. "And Iraq's liberation would be the beginning of our commitment to its people. We will supply humanitarian relief, bring eco sanctions to a swift close, and work for the long-term recovery of Iraq's econo

Martin isn't buying it. "I can't look at him," she said. "I can't look at any of the being lied to."

She said she can see through Bush's lies.

This was a common scene: As people sang and held their candles high, they t neighbors to vent and to offer analysis.

Protesters around the globe lit their candles at 7 p.m. in each time zone, creat vigil.

On the north side of the ring, Tyler Schieh, 7, held a "VI. Thou shalt NOT KIll" on his mother's shoulders.

Dayna Schieh, 31, said she expected more people. "We're only two people. Bu add us together, you have strength in numbers," she said.

If you can't stop the war, you must show disdain for it, people said.

"I've been thinking of coming for weeks, maybe months," William Everhart, 7 joining the peace movement. "I made up my mind that somebody has to get c to show we're a majority, not a minority."

Everhart said he doesn't believe the polls that say the majority of Americans, back a war.

Everybody had their reasons for showing Sunday. Fitz, 55, said she thought of she knew who's serving as a human shield in Baghdad.

"If people are putting their lives on the line for that in Iraq, the least I can do to show support," Fitz said.

Reach Andrew Broman at 771-2035 or abroman@ydr.com.

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THE YORK DISPATCH

March 30, 2003

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Locals at rally brave shouts

Two dozen turn out, and this time they get a permit

By TED CZECH *Dispatch/Sunday News*

Traitor. Commie.

Un-American. Unpatriotic.

As a member of People For Peace York, Bob Kefauver has been called all of those things as he's protested the United States' invasion of Iraq.

And that's a point he makes clear -- he's against the policy, not those who have sworn to carry it out.

"It's possible to love the warrior, but not the war," said the Springettsbury Township resident. "There's nothing unpatriotic about voicing opposition."

Yesterday afternoon, Kefauver was among nearly 30 members who stood on the southeast corner of Continental Square, staging a vigil for an end to the war against Iraq.

Braving cold temperatures and driving rain, they carried rainbow-colored umbrellas, held up placards that read, "No blood for oil," and flashed cars the peace sign.

Some cars crossing the square honked in support. One or two people leaned out their car windows to shout obscenities.

Resolution Although the war was under way, the vigil participants remained undeterred.

BILL KALDAS/STAFF PHOTOGRAPHER

Demonstrators, from left, Fred Ritz, Codorus Twp., Margaret Moore, York and Don Rinne, Springettsbury Twp., attend a People for Peace, York-sponsored rally at Continental Square yesterday, 3/20/03.

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"We want to keep getting the message across that peace is also patriotic," said group leader Leada Dietz. "We have to keep the momentum going, to not have to resort to war, to finding nonviolent solutions to war."

- Police seek victim's
- 'Silent warriors' down
- CIA talk sways local

Dietz held a sign that read "Honk for Peace" on one side and "Love our Planet -- Wage Peace."

Group member Steve Baker of Springettsbury Township also voiced his support for the American troops.

"We would like to see this war end as soon as possible and the troops come home safely and no more innocent victims in Iraq," he said. "We shouldn't be solving the world's problems with violence."

On Tuesday night, the group was told by some members of the York City Council that if they planned to hold any more protests with more than 25 people in public places, they should get the necessary permits.

Ordinance issue: On Sunday, the group held a vigil that attracted 125 people. A city ordinance adopted last year -- aimed at stopping white supremacist groups from holding rallies -- requires a permit for a gathering of more than 25 on public property, including Continental Square

Dietz said she called York City Police and Mayor John Brenner's office earlier yesterday, requesting a permit.

Despite the called-for 10-day waiting period, "We had a permit by the end of the day," she said.

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York County's Afternoon Paper
THE YORK DISPATCH

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Article Last Updated: Thursday, March 20, 2003 - 11:57:54 AM EST

Local peace activist to defy permit law

By LISA RAB *Dispatch/Sunday News*

A member of the York group People for Peace said yesterday she is willing to challenge York City's public assembly ordinance in court.

The ordinance, which requires groups of more than 25 people to obtain a permit to gather on public property, was adopted last April in response to appearances by white supremacist groups.

Leada Dietz, who has been organizing local peace events since last July, said the ordinance infringes on the constitutional right of citizens to hold impromptu public gatherings. She and more than 100 others violated the ordinance when they held a candlelight peace vigil in Continental Square Sunday evening without a permit.

It takes a minimum of 10 days to secure a permit from the city, Dietz said, "So when something happens on short notice, we can't gather and express an opinion."

Protesters might violate the ordinance today, Dietz said, if more than 25 people attend an anti-war demonstration planned for 4:30 p.m. in the square.

Dietz said she has not obtained a permit for the demonstration because it was planned on such short notice -- the group decided to hold a protest the day after a U.S. invasion of Iraq began.

If more than 25 people come to the event and they are asked to disperse, Dietz said those who want to protest the ordinance will stay. People who do not want to violate the ordinance will continue the peace vigil at the Quaker Meeting House on West Philadelphia Street.

Dietz said she was willing to be arrested for disobeying the ordinance. She said she attended Tuesday night's city council meeting and understands the council's perspective on the ordinance, but it's up to the courts to decide if the law is constitutional.

She said she was willing to launch a legal challenge but was not sure

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exactly how to do it, and would have to seek legal advice.

"I feel strongly enough about what I think is the American way of life to engage in the system to maintain it," she said.

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Article Last Updated: Tuesday, March 18, 2003 - 11:34:41 AM EST

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Peace rally violated city's public meeting ordinance

by MIKE HOOVER
Dispatch/Sunday News

A Sunday evening candlelight vigil in Continental Square to promote peace violated York City's public assembly ordinance because demonstrators failed to get permits to hold such a gathering.

GREG NEWMAN/STAFF PHOTOGRAPHER

Dawn Walton, York, and Craig Reese, Spring Garden Township, joined more than 100 others Sunday evening, 3/16/03, for a rally at Continental Square in York.

Any group of more than 25 people must have a permit, according to a city ordinance adopted last April in response to appearances by white supremacist groups.

"They were required to get a permit. No exceptions," said Abe Amors, the city's public information officer.

"We need to be consistent."

To withstand a court challenge, the city must treat every organization the same, regardless of beliefs or political affiliation, he said.

Amors said he is still trying to determine who organized Sunday's rally. He said the organization may get off with a warning and be advised to follow the rules in the future.

The city has the option of citing any group that holds an rally without a permit, and could shut down the event, he said.

Sunday's rally was sponsored by People for Peace, a York-based organization that opposes a war with Iraq.

OTHER ARTICLES IN THIS SECTION
3/18/2003
- 'The tyrant will soon be gone'
- Terror alert on 'orange'
- Academic say hold strike like Iraq
- Surrender deals under way already
- Families wait, worry
- Timeline: U.S. vs. Iraq
- Pa. lawmakers stand behind Bush
- Pivotal moment in U.S. history
- * American sick in Yemen
- Energy Dept.: Gas prices at record high
- Hostage fiasco cases are cited in Pa's enactment for the first time
- Philanthropy raised Artful Dodger
- Canals/Fire drums 'Basement' farewell

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Laada Dietz, a leader in People for Peace, estimates 126 people attended Sunday's rally.

She said it was her understanding that the group did not need a permit because they were gathering on a public sidewalk. She said her group has not secured permits to hold downtown rallies on Fridays for the past three months.

Dietz said Sunday's rally was planned for about a week and was announced through e-mail exchanges, word of mouth and phone calls.

Representatives from People for Peace plan to meet with city officials to make sure they are doing what is needed to hold future rallies, she said.

"It was an oversight," she said.

She said the group wants to continue to hold rallies to increase public awareness of military action.

"There is a certain weight that numbers carry. There is also the need to let people know people who have feelings against the war are not alone," Dietz said.

Councilman Joseph Musso, who sponsored the city's public assembly ordinance, said he is not advocating a crackdown on the peace rally but said everyone has to follow the rules.

"I watched the assembly take place below my window. It was a peaceful gathering. I never gave it any thought that permits would be needed," said Musso, who lives at 18 S. George St.

He said it is up to the administration to enforce the ordinance.

"We do have to apply the ordinance consistently. There is no question," Musso said.

The Nationalist Movement -- a Mississippi-based white supremacist group that held a rally in January -- challenged the city's public assembly ordinance, claiming the city was targeting groups with an unpopular message.

The suit is pending.

Yesterday, Richard Barrett, the leader of the Nationalist Movement, said the rules apply to everyone.

"They have to get a permit," he said.

Councilmen Wm. Lee Smallwood and Cameron Texter said the administration has to enforce the ordinance or it would be ruled null and void, and would be vulnerable to a court challenge for selective enforcement.

"If you are going to put a policy like this in place, you are gong to

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have to enforce it consistently with everyone. Otherwise you get accused of discrimination. It opens us up to constitutional problems. Everyone has to live with it," Texter said.

By all accounts, Texter said, about 125 people attended Sunday's rally and the city should have been notified from a public safety standpoint. He said people could have blocked traffic or the sidewalks, or the rally could have become confrontational.

"You could have another group show up angered at the stand for peace and people could react badly. You could have counter-demonstrators show up and things could get violent. That becomes the city's responsibility," Texter said.

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From: "PfP York PA" <alt-pfpyorkpa@blazenet.net>
To: "crosstar" <nationalist@nationalist.org>
Subject: Re: Input on legal-matters
Date: Mon, 14 Apr 2003 13:24:20 -0400
X-Mailer: Microsoft Outlook Express 5.50.4133.2400

Dear Mr Barrett,

Thank you for your message. I had consulted our legal counsel who determined as far as your suit is concerned, we cannot be a part of that because we have not been cited for our gathering on March 16 and actually had a permit expedited in one day for our rally on March 20. So in a sense, we received preferential treatment that can be of use to your suit, but have no grounds to join with you in it.

We share your concerns about this ordinance, and have been in conversation with City Council about it. We moved one rally to the Armory, and will be exploring other locations in order to diversify our presence, not to avoid the ordinance.

If you have any further questions, I can refer you to our legal counsel.

Sincerely,

Leada Dietz
People for Peace

Appendix 68

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

THE NATIONALIST MOVEMENT, Plaintiff Versus CITY OF YORK, Defendant	Civil Action Cause No. CV-02-1917 (KANE) AFFIDAVIT OF MICHAEL COOK

1. My name is Michael Cook. I am of full-age and competency and able to make the following statement.

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2. I reside at Wrightsville, Pennsylvania, in close proximity to York, Pennsylvania, and have lived there for the past few years. I visit York frequently, do business there and have friends there, for the past several years.

3. I am a rightist political activist, in which I write articles, attend and hold meetings and lobby to advance my point of view. I oppose, for instance, *York Unity*, which has endeavored to promote an integrationist or "diversity" viewpoint, for the past few years, and I have supported individuals and groups, such as The Nationalist Movement, which oppose and counter such views.

4. The purpose of this Affidavit is to describe the setting or political-climate in York, in the past few years, based upon my personal knowledge in speaking with people, hearing and reading news accounts, attending events and interacting with individuals involved in social-activist activities.

5. Beginning in approximately 2000, there has been a climate generated by newspaper editorials, pronouncements by York public officials and by local and non-local individuals and groups that York favors "diversity" and integration. None of the officials has issued any statements countermanding such climate, which generally exudes a sense that anyone not in agreement with

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integrationist views is "persona non-grata."

6. City officials have adopted *York Unity*, which has been promoted as having been designed by the Jewish Anti-Defamation League, based in Philadelphia, which promotes "diversity" and intolerance for those who disagree with that particular view. There has been a *Unity Day* and *Unity Parade* sanctioned by York officials, in which some such officials have taken part.

7. The upshot has been that integrationist sentiment is officially welcomed and sanctioned, whereas opposing views are not.

8. I became involved in a public way when Matt Hale, an integration opponent, sought to appear in York to make a speech in January, 2002. Although Hale handled most arrangements himself, I was involved to some extent and spoke with officials about the event on at least one occasion. I received news coverage, in addition. The climate at the time was that Hale was not welcome and City officials wished to obstruct his appearance.

9. After Hale appeared, the City passed a law to attempt to limit appearances of those who disagreed with its integrationist or "diversity" viewpoint, such as Hale. There were public pronouncements by the Mayor and the Mayor's assistant and others touting the line that opponents of integration were

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unwelcome or would even be run out of town. No official countermanded these reports.

10. A few months after Hale, Richard Butler sought to appear. Shaun Winkler, formerly of York, an acquaintance of mine, was the organizer of the event, but I was not directly involved. Butler is an opponent of integration, in much the same way as Hale. The climate at the time was that Butler must be condemned or, even, kept out. The City was demanding a permit and various restrictions. There were pronouncements that Butler would be charged or "billed" for fees in connection with his appearance. City officials and others generated great hostility toward Butler, in which the local news media joined.

11. The "permit" requirement and demand for fees were apparently dropped by the city, just before the Butler event, although there was talk of sending Butler a bill, which apparently was done. I have not heard that any such bill was ever paid, however, and believe it was not paid.

12. Out of town speakers came in and spoke of the "evils" of Hale, Butler and their "racist" views and were warmly received by city-officials.

13. A similar climate of opposition and vilification took place up until and including the appearance of Rob Dorgan and others in January 2003, *Schaad*

Day. The event, in support of a slain policeman and in opposition to Martin Luther King, drew fire from city-officials and the news-media. People were urged to oppose or stay away from the ceremonies and speeches. I took part as a speaker and organizer, although I am not a member of the organizing group, The Nationalist Movement. I, also, received some news coverage.

14. Similar demands for permits, fees and charges were made by city-officials of the Nationalists and the usual vilifications in the press took place. The pattern was that those who stood up for "diversity" were praised and welcomed, whereas those who did not were disdained and opposed.

15. There was controversy over the issuing of a "permit" and, eventually, court action. The permit requirement was dropped, just before the event, the same pattern as with the previous Butler-event, but officials seem to want it to stay on the books.

16. Some York officials have stated that they will keep their mouths shut, now, because of the pending court case and the vilification has somewhat subsided. However, there have been no public pronouncements by York officials apologizing for or retracting the hostility toward anti-integrationist or anti-diversity groups and individuals, due to the content of their message.

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17. The above and foregoing is true, according to the best of my personal knowledge, information and belief.

18. Further, Affiant saith not.

Sworn and subscribed before me this
19th day of June 2024
D. Keith Gutknecht

Michael Cook
MICHAEL COOK

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
D. Keith Gutknecht, Notary Public
City of Lancaster, Lancaster County
My Commission Expires June 7, 2028

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Blue Weekly News

Published on Tuesday, April 03, 2007 in Original Article

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RACE -- The KKK's inroads in the Northeast

By SEAN O'DRISCOLL - The Associated Press

Joe Bednarsky is one of the most mild-mannered Klansmen you could ever meet.

He despises Ku Klux Klan members who use the n-word at public rallies, describing such talk as "ignorant" and "uneducated." He denounces those who claim whites should control blacks, saying he dreams of white separatism, not white supremacy. In his work life, he has "absolutely no problem" dealing with blacks, Jews or Latinos.

Most of his hate speech, at least to asap, is reserved for neo-Nazis - he describes them as "criminal" and "anti-American."

Joe Bednarsky, leader of the Confederate Knights of the Ku Klux Klan, based in New Jersey.

soundoffasap@ap.org

Bednarsky is the self-styled leader of the Confederate Knights of the Ku Klux Klan, based in his never-been-Confederate home state of New Jersey - one of a growing number of Klan groups in the northeastern United States.

As America and the world mark the 39th anniversary Wednesday of the assassination of the Rev. Martin Luther King Jr., asap looks into whether the racially divisive KKK is expanding north and east - and trying to reinvent itself in the process.

A 'NEW KLAN'?

According to a recent report by the Anti-Defamation League, a group that fights anti-Semitism, northern Klansmen like Bednarsky are enjoying increasing support as whites react to the growing immigration-rights movement.

The report found that the Klan "has experienced a surprising and troubling resurgence due to the successful exploitation of hot-button issues." Klan groups are focusing on immigration, but also on gay marriage and urban crime, as they sprout up in parts of northern states like New Jersey where they were previously unknown.

Bednarsky doesn't often agree with the Anti-Defamation League, but on that point he is in total agreement:

"I'm hearing reports from around the country of a rise in support. It's not necessarily membership but it's people coming to us talking about immigration and other issues."

He sees himself as part of the new Klan movement, in step with others who want to reach out to middle-of-the-road whites who might not don hoods and burn crosses, but who resent immigrants moving into their neighborhoods.

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SAME AS THE OLD KLAN?

"Don't be fooled."

That's the simple advice of Mark Pitcavage, director of investigative research for the Anti-Defamation League. He has seen this "new Klan" idea carried out before, by Arkansas-based grand wizard and pastor Thomas Robb, who has banned his members from chewing tobacco or using the n-word (at least in public) in an attempt to reach mainstream white society.

"This is a matter of style, not substance," Pitcavage says. "The message that some of the northern Klansmen are giving out may not be as crude as some of the other Klans, but it's just bigotry dressed up."

For Pitcavage, the new racism built on the immigration debate cannot simply be measured in the number of new Klan chapters or members.

"The Klan is notoriously internecine," he said. "They break apart and reform all the time. Some racist groups are increasing in membership but many are happy to stir up white discontent about immigration and black-on-white crime. They try to get people active who are not necessarily members of racist groups."

There are many ways to read the new mild-mannered Klan-lite leaders like Joe Bednarsky. In his own eyes, he is the leader of the new Klan, bravely directing his members around the country and bringing the white separatist message to thousands of angry white voters. He also sees himself as an internationalist, with strong ties to the Jewish-hating Iranian government.

To New Jersey-based anti-racism activist Daryle Jenkins, however, Bednarsky is "one sad case."

"He lives with his mother. He doesn't have this great network across America, he barely has any friends within the Klan," he says.

WHAT COMES NEXT?

Bednarsky, who lives in southern New Jersey - less than 50 miles from Philadelphia - is determined to prove Jenkins wrong. He spends a lot of time in the town of Millville taking care of his elderly mother, but the image of him as a lonely man planning Klan meetings from his mother's basement is a falsehood, he says.

To prove his point, he is organizing a Klan rally on May 12 in nearby Hammonton, N.J., where a town councilor refused to apologize for suggesting the New Jersey Klan had tried to spread asbestos in the town hall. Bednarsky is rallying his moderate Klan friends to highlight the local town's injustice to his group.

He has applied for a protest permit, but has contacted the ACLU to help fight the $10 permit fee.

Not exactly the cross-burning, terrifying Klan of decades past.

"Joe Bednarsky is beyond flaky," laughed Daryle Jenkins, whose mind turned to the sympathies for the KKK that a former president (and New Jersey governor) was thought to have. "He's no Woodrow Wilson, and the southern Klans don't have a whole lot to do with him."

The real danger, he says, is from the racial tension that people like Bednarsky try to stir up.

"They can feed into existing problems," says Jenkins. "They can stir up trouble, but ultimately their moment was a long, long time ago and it's not coming back."

...

asap contributor Sean O'Driscoll is based in New York, where he writes for the Irish Times.

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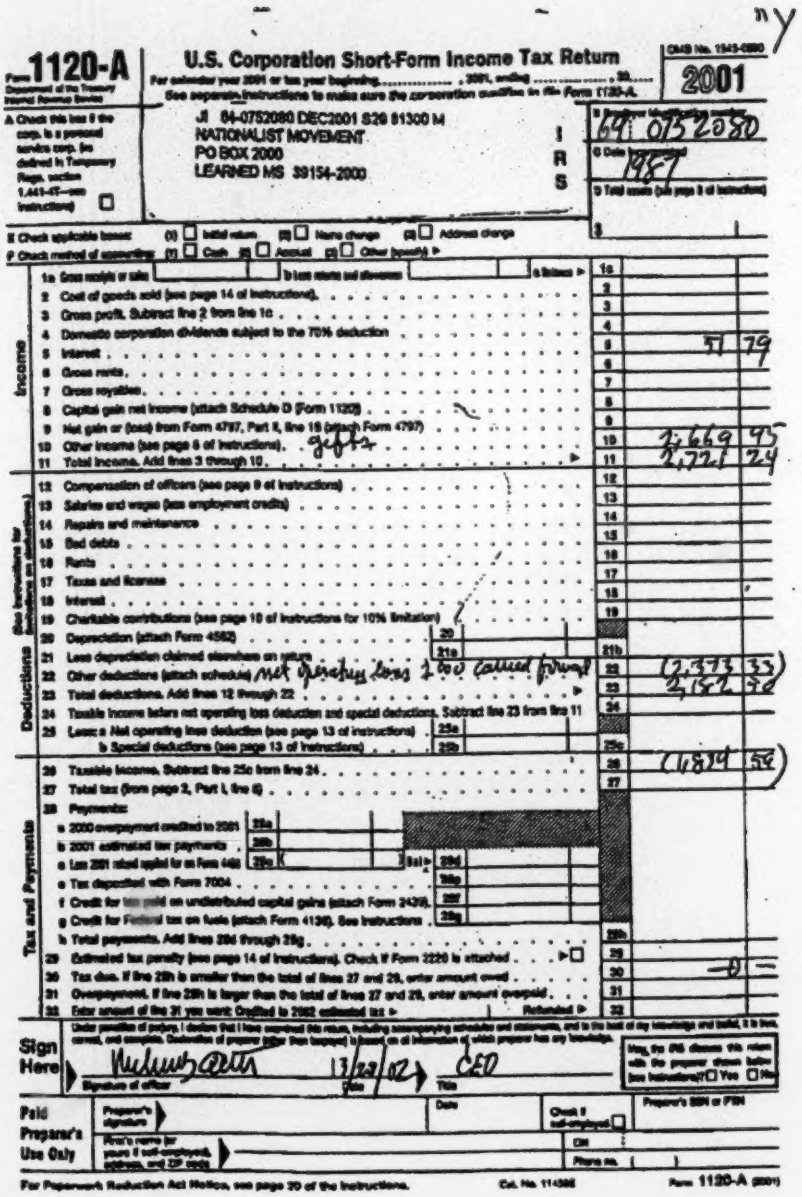

Form 1120-A
Department of the Treasury
Internal Revenue Service

U.S. Corporation Short-Form Income Tax Return

For calendar year 2001 or tax year beginning ..... , 2001, ending ..... , 20.....

See separate instructions to make sure the corporation qualifies to file Form 1120-A.

OMB No. 1545-0890

2001

A Check this box if the corp. is a personal service corp. (as defined in Temporary Regs. section 1.441-4T—see instructions)

JI 64-0752080 DEC2001 S28 81300 M
NATIONALIST MOVEMENT
PO BOX 2000
LEARNED MS 39154-2000

IRS

B Employer identification number: 64 0752080

C Date incorporated: 1987

D Total assets (see page 3 of instructions) $

E Check applicable boxes: (1) ☐ Initial return (2) ☐ Name change (3) ☐ Address change

F Check method of accounting: (1) ☐ Cash (2) ☐ Accrual (3) ☐ Other (specify) ▶

Income

1a	Gross receipts or sales	b Less returns and allowances	c Balance ▶ 1c	
2	Cost of goods sold (see page 14 of instructions)		2	
3	Gross profit. Subtract line 2 from line 1c		3	
4	Domestic corporation dividends subject to the 70% deduction		4	
5	Interest		5	57 79
6	Gross rents		6	
7	Gross royalties		7	
8	Capital gain net income (attach Schedule D (Form 1120))		8	
9	Net gain or (loss) from Form 4797, Part II, line 18 (attach Form 4797)		9	
10	Other income (see page 6 of instructions). gifts		10	1,669 45
11	Total income. Add lines 3 through 10 ▶		11	1,727 24

Deductions (See instructions for limitations on deductions.)

12	Compensation of officers (see page 9 of instructions)	12	
13	Salaries and wages (less employment credits)	13	
14	Repairs and maintenance	14	
15	Bad debts	15	
16	Rents	16	
17	Taxes and licenses	17	
18	Interest	18	
19	Charitable contributions (see page 10 of instructions for 10% limitation)	19	
20	Depreciation (attach Form 4562) 20	21b	
21	Less depreciation claimed elsewhere on return 21a	22	(2,373 33)
22	Other deductions (attach schedule) net operating loss 2 00 carried forward	23	2,152 78
23	Total deductions. Add lines 12 through 22 ▶	24	
24	Taxable income before net operating loss deduction and special deductions. Subtract line 23 from line 11	25c	
25	Less: a Net operating loss deduction (see page 13 of instructions) 25a	26	(1814 54)
	b Special deductions (see page 13 of instructions) 25b	27	

Tax and Payments

26	Taxable income. Subtract line 25c from line 24	26	
27	Total tax (from page 2, Part I, line 6)	27	
28	Payments:		
a	2000 overpayment credited to 2001 28a		
b	2001 estimated tax payments 28b		
c	Less 2001 refund applied for on Form 4466 28c ( ) Bal ▶ 28d		
e	Tax deposited with Form 7004 28e		
f	Credit for tax paid on undistributed capital gains (attach Form 2439) 28f		
g	Credit for Federal tax on fuels (attach Form 4136). See instructions 28g		
h	Total payments. Add lines 28d through 28g ▶	28h	
29	Estimated tax penalty (see page 14 of instructions). Check if Form 2220 is attached ▶ ☐	29	
30	Tax due. If line 28h is smaller than the total of lines 27 and 29, enter amount owed	30	-0-
31	Overpayment. If line 28h is larger than the total of lines 27 and 29, enter amount overpaid	31	
32	Enter amount of line 31 you want: Credited to 2002 estimated tax ▶ Refunded ▶	32	

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of officer: [signature] Date: 3/29/02 Title: CEO

May the IRS discuss this return with the preparer shown below (see instructions)? ☐ Yes ☐ No

Paid Preparer's Use Only

Preparer's signature | Date | Check if self-employed ☐ | Preparer's SSN or PTIN

Print's name (or yours if self-employed, address, and ZIP code) | EIN | Phone no. ( )

For Paperwork Reduction Act Notice, see page 20 of the instructions. Cat. No. 11456E Form 1120-A (2001)

Appendix 77

April 23, 2002

Mayor
City Hall
York PA

Dear Mayor:

Please reserve the City Hall grounds, steps and surrounding streets for our *Henry Schaad Day* parade and rally ceremonies, January 20, 2003. The parade will use the public street direct from the front of the City Hall around the city-hall block and back to the front, where the rally will take place. The event -- which is a protest in exercise of free speech under the First Amendment -- will honor Henry Schaad, the intrepid policeman and heroic victim of the violence, hate and lawlessness instigated by the late Martin Luther King, call for abolition of the King Holiday and demand that York respect the Bill of Rights.

Kindly reserve the area from 9:00 AM (at which time decorating, staging and equipment will set in place, followed by assembly for paraders in front of City Hall between 11:00 AM and Noon. The parade will step off at Noon from the front of City Hall, proceeding in the full width of the street around the block and back to the point of beginning. The rally -- including ceremonies, petitions and speeches -- will begin at 12:30 PM at the City Hall front steps and last until approximately 3:00 PM, followed by disassembly of the equipment and signing of petitions, completing at 4:00 PM. The event will be open to the pro-majority public, who we decide to admit. The interior of the building is not needed.

We will need access to electricity for loud-speakers and electronic equipment, so kindly have an outlet and power handy. I anticipate approximately 50 paraders or participants at City Hall plus approximately 100 spectators, as well as likely some additional hostile counter-demonstrators, who have attacked and rioted against our ceremonies in the past.

Insofar as there have been violent counter-demonstrators at our other such events, I request adequate security. I will advise you of further plans when I have received your confirmation. You will probably wish to arrange for some rest-room facilities for those attending or providing security, as well.

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Provision should be made for counter-demonstrators to assemble sufficiently distant from the events so as to not interfere with ralliers' First Amendment rights. Also, it must be understood that there can be no noise of any kind generated by anyone which would disrupt or amount to a "heckler's veto" of the ceremonies, *see e.g. Terminiello v. Chicago, US Supreme Court, 1949.*

In essence, there will be three "tiers." The first will be the City Hall grounds as the rally site. Then, the area in front and street for assembly of interested spectators and supporters. Then, the distant area for hostile individuals. I would recommend following the pattern we established in Dubuque, Iowa, where our cadre assisted security personnel in admitting people at various checkpoints and policing the parade route, but without any high-handedness which would oppressing members of the public genuinely wishing to take part.

Arrangements for adequate and secure parking would be desirable, as well, as you may suggest. Kindly send me a map, laid out with logistics. You may count on my full cooperation for a safe and patriotic event. I will be updating you as the parade marshal and others on the program are named.

The Nationalist Movement has been prompted to schedule this event – which will be the centerpiece of its national protest against the King Holiday – in large measure because of officials' announced plans to pass an "ordinance" abolishing the First Amendment in York. We demand that such an ordinance be abolished or declared invalid, so that there may be freedom of speech and assembly, without exception, in Pennsylvania. It is an embarrassment to the entire nation that York would entertain "seceding from the Union," in order to placate riotous and subversive elements who support favors for minorities and criminals and have sought to dishonor Officer Schaad.

A word about logistics. This event will be governed by the authority, rules and logistics set out by The Nationalist Movement, not by government officials or police, under the law of the land, as we have established it, *see e.g. Forsyth County v. The Nationalist Movement,* US Supreme Court, 1992. There will be no charges, permit fees, insurance bonds, security costs or any other taxes whatsoever on the grounds that any such scheme would violate the First Amendment and, alternatively, that the sponsor is not able to afford any such costs. I am authorized to tender the sum of $1.00, however, to cover the small amount of electric power consumed, if you wish us to do so.

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Also of concern to us has been an event conducted by atheists in January, at which there was public disorder, and in April by Hitlerians, in which oppressive restrictions were imposed. We are neither connected with such prior events nor do we approve of them. We will be advancing pro-majority sentiment in a patriotic manner, with inspirational messages in a decorous setting. This is so that supporting members of the public can inspirationally take part and meaningfully petition. And, most important, we will rid York of the tyranny which purports to make speech "free" only for the wealthy who can afford to pay a price for it, under your proposed unconstitutional regulations.

Further, in giving a voice to the poor and working people, we contemplate having an open mike for the expounding of grievances and will be receiving messages from those interested to be read, who may be otherwise unable to speak in person.

We anticipate that supporters may be carrying signs, flags and banners, some of which we will be supplying, ourselves. The Nationalist Movement, a Mississippi non-profit corporation which is sole sponsor of the event, will be distributing literature, along with petitions. We laid a wreath in honor of Officer Schaad at our rally in New Jersey on the Fourth of July last year. We had invited Mayor Charlie Robertson, at that time, to attend, but he declined, which has, also, heightened our resolve to have this fitting memorial in York.

There should be adequate arrangements and a suitable area laid out for any bona fide news media. We will be keeping a tight rein on our own personnel, to prevent admission of anyone disruptive or unauthorized to the staging area, but yet allowing those who wish to take part to take part. Our sound system, additionally, will allow those sufficiently distant, who may wish to be only spectators, to hear the ceremonies, even from some distance. *See e.g., The Nationalist Movement v. City of Boston*, US Dist. Court, 1998; *The Nationalist Movement v. City of Vidor*, US Dist. Court, 1993; *County of Morris v. The Nationalist Movement*, 3d US Cir. Court of Appeals, 2001.

If you do have any particular forms you wish to be completed or procedures you wish us to consider, please forward them to me. I am sending a copy to the County, as well. If there are any other jurisdictions which should be notified, kindly notify them or advise me and I will place them on notice. I would caution you or any other officials to refrain from any words or actions which could amount to a conspiracy in violation of the First Amendment. The Nation-

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alists are diligent, active and courageous in guarding and advancing the rights of the American people. And Yorkers will have increased freedom and hondt because of the empowerment which Nationalists shall make possible for them.

You may wish to issue a proclamation in honor of Henry Schaad Day, a suggested text of which we will send you as the date approaches. With appreciation and regards,

Yours sincerely,

Richard Barrett
General Counsel

rb:hs
Encls.
cc: York County

Appendix 81

September 3, 2002

Steven M. Hovis, Esq.
Stock & Leader
PO Box 5167
York PA 17405

Re: Parade and Rally, January 19, 2004 and January 17, 2005

Dear Mr. Hovis:

Enclosed please find the notice of The Nationalist Movement for a parade and rally on January 19, 2004 and on January 17, 2005 using the city hall grounds and surrounding streets. Insofar as it appears that the case could be in litigation, we intend to press our grievances until the First Amendment issues surrounding your challenged ordinance are resolved in our favor.

The application, enclosed, is identical to the one for January 20, 2003, except that additional newspaper clippings and background have been added, as an update, and the corporate charter is included, as is the federal tax-ID number. You may add these to that file, as well.

Application is also made for various other miscellaneous permits. I had asked for such forms, previously, in my letter to your of August 2, 2002, but have not received them, as yet. If you send them, we will be happy to fill them out. Or, kindly accept the following as such applications.

The "Permits" under Subsection (c) of the ordinance, which The Nationalist Movement desires, are:

Assembly or parade (1); distribution of literature (2), placing of vehicle (5), sound amplification (6), erection of platform (7), use of electrical device (8), offering of goods or services (9), displaying placard, pamphlet or books (10), display of pamphlets.

Subsection (d)(1) provides for a "permit" for:

event (a), sale of goods or services (b), amplified sound (g), staging (h),

power (i).

Also, insofar as subsection (f)(3) speaks of "financial burden," kindly send me a statement of the various fees, charges, levies, taxes and whatever else you propose to charge, so we can determine the "financial burden" in supplying the affidavit also called for in the measure.

Notwithstanding, The Nationalist Movement is unable to afford any such fees, bonds, levies, taxes or charges and, furthermore, objects to the same, as well as the ordinance which purports to levy them, as a violation of the First and Fourteenth Amendments, on its face or as applied.

Waiver of the ordinance or its provisions cited above is, also, hereby requested on First Amendment grounds.

I would suggest that you study the recent case of *Royal v. City of York, Alabama*, Civil Action No. CV-02-1716-W, U.S. District Court, Northern District of Alabama, Western Division (2002), in which restrictions under an ordinance similar to yours were declared unconstitutional, under the doctrine of *Forsyth County v. The Nationalist Movement.*

Sincerely,

rb:hs
Encls.
cc: Media

Appendix 83

September 17, 2002

Steven M. Hovis, Esq.
Stock & Leader
PO Box 5167
York PA 17405

Re: Parade and Rally permits, waivers, costs, appeal, litigation, etc.
Via: U.S. Postal Service, Certified Mail, Return Receipt Requested

Dear Mr. Hovis:

My letters to you – as City Attorney – of August 2, 2002 and September 3, 2002, together with various applications for permits and waivers, requests for costs and names of personnel and officials, request for your position on missed deadline by public-works official, appeal to City Council and other matters – fo. our events on January 20, 2003 and subsequent years – remain unanswered. Time, of course, is of the essence.

Kindly regard this letter as our final demand for response from the City of York. If we do not have your response within seven (7) days of your receipt hereof, The Nationalist Movement will proceed to protect its First-Amendment rights by resort to U.S. District Court, without further notice.

With best wishes,

Sincerely,

rb:hs
cc: Media
City Clerk
Mr. Gerald McManus

20

Supreme Court, U.S.
AUG 3 1 2007
OFFICE OF THE CLERK

NO. 07-8

IN THE
SUPREME COURT OF THE UNITED STATES

THE NATIONALIST MOVEMENT,
Petitioner

v.

CITY OF YORK,
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES DISTRICT COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. WHETHER PETITIONER HAS PRESENTED COMPLELLING REASONS TO GRANT THE PETITION WHERE THE DECISION OF THE COURT OF APPEALS THAT A FEE MAY BE CHARGED FOR THE EXERCISE OF FREE-SPEECH AND ASSEMBLY AT A SEAT OF GOVERNMENT DOES NOT CONFLICT WITH A DECISION OF THIS COURT OR A COURT OFAPPEALS?

2. WHETHER PETITIONERS PRESENT A COMPELLING REASON TO GRANT THE PETITION, WHERE THE THIRD CIRCUIT'S OPINION REGARDING THE CHARGING OF A FEE FOR THE EXERCISE OF FREE-SPEECH AND ASSEMBLY IN A TRADITIONAL PUBLIC FORUM DOES NOT PRESENT A QUESTION OF EXCEPTIONAL IMPORTANCE?

CORPORATE DISCLOSURE STATEMENT PURSUANT TO SUPREME COURT RULE 29.6

Respondent, the City of York, is a municipal corporation and a political subdivision of the Commonwealth of Pennsylvania. The City of York does not have a parent corporation and there is no stock held by a publicly held company.

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COUNTERSTATEMENT OF THE CASE

Plaintiff/Appellant, the Nationalist Movement initiated this civil action by filing a Complaint pursuant to 42 U.S.C. §1983, §1985 and §1988 for alleged violations of Plaintiff's First, Fifth and Fourteenth Amendment rights and for declaratory judgment pursuant to 28 U.S.C. §2201 and 2202. In the Complaint, Plaintiffs sought to conduct a rally, deliver speeches and circulate petitions on the steps of the York City Hall and to conduct a parade upon the streets adjoining City Hall on January 20, 2003.

Thereafter, Plaintiff/Appellant filed a Motion for a Temporary Restraining Order and Motion for Preliminary/Permanent Injunction seeking to enjoin the City of York from enforcing Article 741, Section 741.03 of the Codified Ordinances of the City of York with respect to the activities planned for January 20, 2003. A hearing on Plaintiff/Appellant's request for a temporary restraining order and/or injunctive relief was scheduled for January 13, 2003 at 1:30 p.m. Following several telephone conference calls among counsel and the Court on January 9 and January 10, 2003, the parties effectuated a settlement agreement of all of Plaintiff's claims, except the claim for attorney's fees and costs pursuant to 42 U.S.C. §1988.

By Order dated January 10, 2003, the District Court granted Defendant's/Appellee's concurred in Motion to Dismiss as moot Plaintiff's Motion for Temporary Restraining Order and/or Preliminary Injunction and cancelled the hearing schedule for January 13, 2003. In that Order, the District Court further noted that pursuant to the agreement of counsel, the City of York would provide police at Plaintiff/Appellant's planned activity; the City of York would not interfere with Plaintiff/Appellant's planned activities in the City of York on January 20, 2003; and that the City of York would provide electricity for the planned activities at City Hall on January 20, 2003 for a nominal fee of one ($1.00) dollar.

On May 5, 2003, Defendant/Appellee City of York filed a Motion to Enforce Settlement Agreement, or in the Alternative, a Motion to Dismiss as Moot Plaintiff's Complaint. By Order dated March 23, 2004, the District Court denied Defendant/Appellee's Motion to Enforce Settlement Agreement, or in the Alternative, Motion to Dismiss Complaint as Moot.

Thus, Plaintiff/Appellant was free to pursue its constitutional challenges to the City's Ordinance on its face and is applied to the Plaintiff/Appellant.

The parties then filed Cross-Motions for Summary Judgment on Plaintiff/Appellant's facial and as applied challenges to the City of York's Public Meetings Ordinance. By Memorandum and Order dated March 24, 2006, the District Court granted in part and denied in part Plaintiff/Appellant's Motion for Summary Judgment. The District Court granted Plaintiff's Motion for Summary Judgment as to Count 2 of the Complaint and declared that Section 741.03(d)(7) and (d)(9) were unconstitutional as written. In all other respects, Plaintiff/Appellant's Motion for Summary Judgment was denied.

In its March 24, 2006 Memorandum and Order, the District Court granted in part and denied in part Defendant/Appellee, City of York's Motion for Summary Judgment. Defendant/Appellee's Motion was granted with regard to: Plaintiff/Appellant's First Amendment challenges to all other aspects of the Ordinance; Plaintiff/Appellant's claims of denial of equal protection and due process; and Plaintiff/Appellant's challenge to the Ordinance as void for vagueness and overbroad. Accordingly, Counts 1, 3, 4, 5, 6, 7, 8 and 9 of the Complaint were dismissed. In all other respects, the District Court denied Defendant/Appellee's Motion for Summary Judgment.

The Nationalist Movement then filed a timely Notice of Appeal to the United States Court of Appeals for the Third Circuit. By Memorandum and Order dated March 21, 2007, the Third Circuit affirmed, in part, and reversed in part, the District Court's decision on the Cross-Motions for Summary Judgment. The Third Circuit struck down the reimbursement and indemnification provisions of the City's ordinance. The District Court's decision was affirmed in all other respects.

v.

COUNTERSTATEMENT OF THE FACTS

Steven M. Hovis, Esquire, is an attorney licensed to practice law within the Commonwealth of Pennsylvania. At all times relevant to Plaintiff's Complaint, Attorney Hovis has served as Assistant City Solicitor for the City of York. (Hovis Dec. ¶ 1) As Assistant City Solicitor, Attorney Hovis was requested to draft an Ordinance amending Article 741, § 741.03 "Public Meetings" of the Codified Ordinances of the City of York, Pennsylvania, to establish procedures for obtaining a permit to meet and gather in the parks of the City of York. (Hovis Dec. ¶ 2)

The object of the permit system was not to exclude communication of a particular content, but to coordinate multiple uses of limited space; to assure preservation of the park facilities; to prevent uses that are dangerous, unlawful or impermissible under the City's rules; to assure financial accountability for damage caused by a permitted event; and to address the enormous strain on the City's financial resources associated with police overtime and other costs incurred with respect to providing security at permitted events. (Hovis Dec. ¶ 3) In March, 2002, a unanimous United States Supreme Court upheld the permitting system adopted by the Chicago Park District. See, Thomas v. Chicago Park District, 534 U.S. 316, 332 (2002). (Hovis Dec. ¶ 4)

Prior to drafting the Ordinance for the City of York, Attorney Hovis obtained a copy of the permit system adopted by the Chicago Park District. Other than some minor technical changes, the City of York's Permit Ordinance is substantially similar to the park permitting ordinance which had passed Constitutional muster in the Thomas v. Chicago Park District case. (Hovis Dec. ¶ 5; Exhibit "1") On April 16, 2002, the Council of the City of York adopted Ordinance No. 10 amending Article 741, § 741.03 "Public Meetings" of the Codified Ordinances of the City of York, Pennsylvania, by providing for a procedure of obtaining a permit to meet and gather in the parks of the City of York. The Ordinance became effective upon the approval of Mayor Brenner on April 19, 2002. (Hovis Dec. ¶ 6; Exhibit "2")

At the time that he prepared Ordinance No. 10 of 2002, Attorney Hovis was unaware of the group known as the Nationalist Movement and/or

the views held by that group. (Hovis Dec. ¶ 8) Ordinance No. 10 of 2002 was adopted as a reasonable time, place and manner regulation of activities within the City of York and was not an attempt to exclude communication of any viewpoint, philosophy and/or comment.

The City of York's Ordinance imposed a deadline for processing a permit application (Section 741.03(e)(3)); required written notice of the grounds for denial (Section 741.03(e)(4)), enumerates the grounds upon which the City may deny the application (Section 741.03(e)(5)) and also provides procedures for review and appeals. (Hovis Dec. ¶ 9) On or about June 14, 2002, the Nationalist Movement submitted an application permit to hold a Henry Schaad Day and King holiday protest in and around York City Hall on January 20, 2003. (Hovis Dec. ¶ 10; Exhibit "3")

In its application, the Nationalist Movement objected to several of the provisions of the Ordinance, including those relating to security deposits, insurance coverage and indemnification agreements. The applicant's objection was predicated on refusal to pay for the security deposit, insurance coverage and not due to any claimed inability to pay for same. (Hovis Dec. ¶ 11) Section 741.03(f)(3) of the City of York's Ordinance provides that any requirement for a user fee, security deposits or certificate of insurance may be waived "if the activity is protected by the First Amendment of the United States Constitution and the requirement would be so financially burdensome that it would preclude the applicant from using park property for the proposed activity." (Hovis Dec. ¶ 12)

By correspondence dated July 12, 2002, Attorney Hovis notified Richard Barrett of the Nationalist Movement that the permit application was being denied as incomplete and for failure to comply with the requirements of the City's Ordinance. (Hovis Dec. ¶ 13; Exhibit "4") Neither the nature of the event nor the content of the event organizers' message was a motivating factor in my decision to deny the Permit Application. (Hovis Dec. ¶ 14)

On or about July 15, 2002, Mr. Barrett submitted an appeal letter from my decision denying the Permit Application. By correspondence dated July 25, 2002, James E. Gross, Director of Public Works for the City of York, affirmed the denial of the Permit Application for "Henry Schaad Day" based upon the deficiencies identified in my July 12, 2002 correspondence. (Hovis Dec. ¶ 15; Exhibit "5") Thereafter, Mr. Barrett asked the City Council to

exercise discretion by entertaining a further appeal, but there was no duty on the part of City Council to entertain such an appeal under the Ordinance, and Council declined to do so. (Hovis Dec. ¶ 16)

On August 19, 2003, the Council of the City of York enacted Ordinance No. 33 of 2003 amending the Public Meetings Ordinance. That amendment deleted § 741.03(c)(1)(b) [which dealt with circulation or distribution of any handbills, notices, pamphlets, books, documents or papers] and § 741.03(c)(1)(j) [which dealt with the display, posting or distribution of any placard, handbill, pamphlet, circular, book or other writing] in their entirety. (Hovis Dec. ¶ 17; Exhibit "6")

REASONS FOR DENYING THE PETITION

The decisions below do not conflict with the decision of this Court or any Court of Appeals, nor do they implicate a federal questions that has not been decided by this Court. Accordingly, Petitioner has not carried its burden of demonstrating any "compelling reasons" for the Petition to be granted. See, Sup. CT. R.10.

A. The District Court properly granted summary judgment in favor of the City of York on Plaintiff's facial and as applied challenges to all provisions of the City of York Public Meetings Ordinance except for Section 741.03 (d)(7) and (d)(9)

The First Amendment protects speech and other expressive activity in public places or "government fora", and the degree of protection depends upon the type of forum at issue. See, Kreimer v. Borough of Police, 958 F.2d 1242, 1255-1256 (3rd Cir. 1992). The Supreme Court has identified three (3) types of fora. See, Arkansas Education Television Commission v. Forbes, 523 U.S. 666, 677 (1998). First, there are traditional public fora, the streets, parks and public sidewalks are all considered as places for public assembly and the communications of ideas. Kreimer, 958 F.2d at 1261. Second, there are designated public fora, areas the government has specified for First Amendment activities. Id. Third, there are non-public fora, places "which are not 'by tradition or designation [fora] for public communication' and are the governmental equivalent of private property." Id. at 1256.

For traditional fora and designated fora, regulation of First Amendment activity is Constitutional if three (3) conditions are met. First, the regulation must be content-neutral that is "justified without reference to the content of the regulated speech." Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989). Secondly, it must be "narrowly tailored to serve a significant governmental interest." Id. Third, it must "leave open ample alternative channels for communication of the information." Id.

In March, 2002, a unanimous United States Supreme Court upheld the permitting system adopted by the Chicago Park District. See, Thomas v.

Chicago Park District, 534 U.S. 316, 332 (2002). (Hovis Dec. ¶ 4) Prior to drafting the Ordinance for the City of York, Attorney Hovis obtained a copy of the permit system adopted by the Chicago Park District. Other than some minor technical changes, the City of York's Permit Ordinance is substantially similar to the park permitting ordinance which had passed Constitutional muster in the Thomas v. Chicago Park District case. (Hovis Dec. ¶ 5; Exhibit "1")

The Supreme Court has found that the government has a substantial interest in "coordinating multiple uses of limited space" which implicates a permittee's interest in the use and enjoyment of that space. Thomas v. Chicago Park District, 534 U.S. 316, 332 (2002). In Thomas, the Chicago Park District adopted an ordinance which required a person to obtain a permit in order to "conduct a public assembly, parade, picnic or other event involving more than 50 individuals," or engage in an activity such as creating or emitting any amplified sound." Id. at 318. The permit statute in Thomas is substantially similar to the City of York ordinance at issue in this litigation, as were the thirteen (13) specified grounds for rejection of a permit under the Chicago Park District ordinance. See, Thomas, 534 U.S. at 318-319 n. 1. The Court noted that the "object of the permit system, as plainly indicated by the permissible grounds for permit denial is not to exclude communication of a particular content, but to coordinate multiple uses of limited space, to assure preservation of the park facilities, to prevent uses that are dangerous, unlawful or impermissible under the park district's rules, and to assure financial accountability for damage caused by the event." Id. at 322.

In assessing the appropriateness of the permitting scheme as a time, place and manner regulation, the Supreme Court noted that "even content-neutral time, place and manner restrictions can be applied in such a manner as to stifle free expression" where the licensing official enjoys unduly broad discretion in determining whether to grant or deny a permit. Thomas, 534 U.S. at 323 (citing Forsyth County v. Nationalist Movement, 505 U.S. 123, 131 (1992)). Thus, the regulation in question must contain adequate standards to guide the official's decision and render it subject to effective judicial review. Id.

In the District Court proceedings and again on appeal, Petitioner challenged the permit fee provisions of the York Ordinance. In its March 24, 2006 Memorandum and Opinion, the District Court noted that the York

officials have no discretion with regard to the permit fee and that the nominal fee for a basic permit is set based upon the City facility being utilized and whether the applicant is a City resident or non-resident. It is also important to note that the City must waive the permit fee upon a showing that the fee would "be so financially burdensome that it would preclude the applicant from using park property for the proposed activity." The waiver provision of the Ordinance is mandatory once the applicant provides objective evidence of an inability to pay.

In granting summary judgment on Plaintiff's First Amendment claim, the District Court noted that because the nominal user fee leaves no discretion to the official, does not base the amount charged on the content of the message, is narrowly tailored to allow the City to only to recover the incidental costs of processing the application, and makes provisions for groups unable to pay, the user fee does not facially violate the First Amendment.

On appeal, the Third Circuit distinguished Forsyth County v. Nationalist Movement, 505 U.S. 123, 130, (1992) in that the statute allowed a variable fee up to $1,000.00 per day; there were no standards directing the setting of the fee; and the fee was, in part, based on the content of the speech. The Third Circuit noted that the York City Ordinance did not contain any discretionary component involving the setting of the application fee; absent a waiver, the fee was applied across the board to all perspective users; and the fee was nominal and narrowly tailored to allow the City to recoup the cost of processing the application. Consequently, the Third Circuit properly concluded that the application fee did not violate the First Amendment.

Petitioner also challenges the $50/$100 application fee as a violation of the Equal Protection Clause. While the Equal Protection Clause "is essentially a direction that all persons similarly situated should be treated alike, in City of Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432, 439 (1985), the Supreme Court has clarified that "equal protection does not require that all persons speak out with identically, but it does require that a distinction made have some relevance to the purposes for which the classification is made." Baxstrom v. Herold, 383 U.S. 107, 111 (1966). Further, the "Equal Protection Clause" requires that statutes affecting First Amendment interests be "narrowly tailored to their legitimate objectives."

Police Department of the City of Chicago v. Mosley, 408 U.S. 92, 101 (1972).

In dismissing Petitioner's equal protection challenges to the permit fee, the District Court found that said claim was functionally identical to Plaintiff's First Amendment challenge. See, Hill v. City of Scranton, 411 F.3d 118, 126 (3d Cir. 2005). As noted above, the District Court found that the permit fee scheme did not violate the First Amendment on its face, nor was there any evidence that it was applied against the Petitioner in a discriminatory fashion. The District Court also noted that the de minimus reduction in the fee for city residence further the legitimate government purpose of encouraging city residence to hold events locally within the City. Since the City residents already fund the York Recreational Department through the taxes they pay, this de minimus reduction in the user fee does not offend the Equal Protection Clause.

On appeal, the Third Circuit noted this Honorable Court has upheld residency requirements, such as this under a rational basis test, where, as here, there was no contention that fundamental rights were at issue. See, e.g. Martinez v. Bynum, 461 U.S. 321, 328-39 (1983) (school residency requirement); Baldwin v. Fish and Game Commission of Montana, 436U.S. 371, 388-92 (1978) (hunting permit for sport). The Third Circuit properly concluded that Petitioner has not shown that the rational basis test does not apply to this content–neutral minimal application fee, much less that, under that test, the differential does not pass muster. Consequently, Petitioner has not presented any compelling reason to grant the Petition for a Writ of Certiorari.

With respect to Petitioner's "as applied" challenge to the ordinance, it is important to note that Petitioner was allowed to conduct its event in the City of York on January 20, 2003. Moreover, Petitioner was not required to obtain a permit or otherwise comply with the provisions of the City of York's ordinance. In short, Petitioner was afforded an opportunity to conduct its rally, make its speeches, distribute its literature and otherwise proceed as planned with its Henry Schaad Day/King Holiday protest. Under the circumstances, it strains credulity to suggest that the Ordinance has been applied against Petitioner in an unconstitutional manner.

CONCLUSION

Petitioners have not established any compelling reasons for this Court to grant the Petition. Therefore, Respondent respectfully requests that the Petition be denied.

Respectfully submitted,

Lavery, Faherty, Young & Patterson, P.C.

By: /s/ James D. Young

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DATE: August 31, 2007

PROOF OF SERVICE

The undersigned counsel hereby verifies that on the below listed date he personally caused to be served upon the following two true and correct copies of the Brief of Respondent, City of York, by mailing same, via first class mail, postage pre-paid, as follows:

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